Jury Instructions

United States of America v. David Lasseque
(CR 13-111 S)

Introduction

At this time, it is my duty to instruct you on the law applicable to this case. You must accept the rules of law that I give you and apply them to the facts in this case as you find those facts to be.

In applying the law that I am about to explain to you in these instructions, you must consider the instructions as a whole. You should not choose one part and disregard another. You must accept and apply the law as I give it to you in its entirety.

You must accept and apply the rules of law that I give to you whether you agree with them or not. It would be a violation of the oath you took as jurors to base a decision on any version of the law other than that contained in my instructions, just as it would be a violation of that oath to return a decision upon anything but the evidence in this case. It is not up to you to decide what the law is or should be. Your duty is to apply the law as I explain it to you.

Jury Not to Consider Punishment

If you find the Defendant guilty, it will then be my job to decide what punishment should be imposed. In considering the evidence and arguments that were presented during the trial, you should not guess about the punishment. It should not enter into your consideration or discussions at any time.

Presumption of Innocence

As I told you at the start of this trial, the Defendant is presumed to be innocent of the accusations against him. This presumption of innocence remains with the Defendant unless and until the Government presents evidence satisfying you beyond a reasonable doubt that the Defendant is guilty.

The presumption of innocence is sufficient to require a not guilty verdict unless you find that such evidence has been presented.

If you find that the Government has proven the Defendant guilty beyond a reasonable doubt, the presumption of innocence disappears and is of no further avail to him. However, until that time, the presumption remains with the Defendant.

Proof of All Elements

Shortly, I will explain the offenses with which the Defendant is charged and the elements the Government must prove in order to establish that the Defendant is guilty of these offenses.

In order for the Government to prove the Defendant guilty of an offense, it must convince you, beyond a reasonable doubt, that it has proven each and every element of that offense. Possibilities or even probabilities are not sufficient.

If the Government fails to prove any one or more elements of an offense beyond a reasonable doubt, you must find the Defendant not guilty of that offense.

On the other hand, if you are convinced, beyond a reasonable doubt, that all elements of an offense with which the Defendant has been charged have been proven, then you should find the Defendant guilty of that offense.

Bear in mind that the requirement that the Government prove every element of the offenses with which the Defendant is charged does not mean that the Government is required to prove every statement contained in the indictment.

What it means is that the Government must prove facts sufficient to prove all of the elements of the offenses with which the Defendant is charged as I will explain them.

Reasonable Doubt

As I have said, the burden is on the Government to prove beyond a reasonable doubt that the Defendant is guilty of the charges made against him. It is a strict and heavy burden, but it does not mean that the Defendant's guilt must be proved beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning the Defendant's guilt.

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Reasonable doubt exists when, after weighing and considering all the evidence, using reason and common sense, jurors cannot say that they have a settled conviction of the truth of the charge.

Of course, a Defendant is never to be convicted on suspicion or conjecture. If, for example, you view the evidence in the case as reasonably permitting either of two conclusions - one that the Defendant is guilty as charged, and the other that the Defendant is not guilty - you will find the Defendant not guilty.

It is not sufficient for the Government to establish a probability, though a strong one, that a fact charged is more likely to be true than not true. That is not enough to meet the burden of proof beyond reasonable doubt. On the other hand, there are very few things in this world that we know with

absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

Concluding my instructions on the burden, then, I instruct you that what the Government must do to meet its heavy burden is to establish the truth of each part of the offenses charged by proof that convinces you and leaves you with no reasonable doubt, and thus satisfies you that you can, consistently with your oath as jurors, base your verdict upon it. If you so find as to one or more of the charges against the Defendant, you will return a verdict of guilty on those charges. If, on the other hand, you think there is a reasonable doubt about whether the Defendant is guilty of an offense, you must give the Defendant the benefit of the doubt and find the Defendant not guilty of that offense.

Indictment - Effect

You will have the indictment with you in the jury room to help you remember the precise nature of the charges against the Defendant.

I remind you, once again, that an indictment is nothing more than an accusation. It should not be considered as evidence of guilt. It may not even be the basis of an inference of guilt. All that it does is to bring this matter before you for determination. Beyond that, it has no significance, whatsoever. It merely sets forth the elements of the offenses which the Government must prove beyond a reasonable doubt.

Definition of "On or About"

You will note the indictment charges that the offenses were committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged.

Summary of the Charges

The indictment in this case charges the Defendant, David Lasseque, with two counts:

Count One charges the Defendant with aiding and abetting an armed bank robbery.

Count Two charges the Defendant with conspiracy to commit bank robbery.

As I have told you, each of these offenses has essential elements. To find the Defendant guilty of an offense, you must all find that the Government has proven each of the essential elements of that offense beyond a reasonable doubt. I will explain the elements of each offense and specific definitions in more detail shortly.

Multiple Counts – One Defendant

As you consider the charges against the Defendant, keep in mind, a separate offense is charged in each of the two counts of the Indictment. Each offense, and the evidence which applies to it, should be considered separately, and you should return separate verdicts as to each count.

Count One – Aiding and Abetting an Armed Bank Robbery

I will now instruct you about the law governing the charges in the indictment. I will begin with Count One – Aiding and Abetting an Armed Bank Robbery. 18 United States Code Section 2113(a) makes it illegal to "take, or attempt[] to take," "by force and violence, or by intimidation," "any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank."

In addition, 18 United States Code Section 2113(d) makes it an offense, in committing, or attempting to commit, a bank robbery, to "assault[] any person, or put[] in jeopardy the life of any person by the use of a dangerous weapon or device." Shortly, I will explain the definitions of several of the terms contained in these instructions.

But first, to find the defendant guilty of aiding and abetting an armed bank robbery, you must be convinced that the government proved each of the following elements beyond a reasonable doubt:

First: that Pierre S. Rheau intentionally took money belonging to the Bank of America from a Bank of America employee;

Second: that Pierre S. Rheau used intimidation or force and violence when he did so;

Third: that at that time, the deposits of the Bank of America were insured by the Federal Deposit Insurance Corporation; and

Fourth: that Pierre S. Rheau assaulted someone or put someone's life in jeopardy by using a dangerous weapon or device.

Definition of "Intimidation"

I am now going to instruct you as to the specific meanings of some of the terms used in these instructions. The term "Intimidation" means actions or words used for the purpose of making someone else fear bodily harm if he or she resists. The courage or timidity of the victim is irrelevant. The actions or words must be such as to intimidate an ordinary, reasonable person.

Definition of "Assault"

"Assault" means to threaten bodily harm with an apparent ability to succeed, where the threat is intended to and does generate a reasonable apprehension of such harm in a victim. The threat does not have to be carried out.

If you find beyond a reasonable doubt that the Defendant displayed a dangerous weapon or device during the robbery, you may find that the person assaulted another person. If you find beyond a reasonable doubt that the person displayed a dangerous weapon or device, you need not find that the weapon was real or was loaded. The law requires only that the person used a dangerous weapon or device, not that the weapon be loaded or actually be capable of firing. A weapon may be dangerous if it instills fear in the average citizen, creating an immediate danger that a violent response will follow.

Aiding and Abetting

In this case, the Government does not claim that the Defendant, David Lasseque, himself took money from the person or in the presence of another by means of robbery. Rather the Government alleges that Pierre S. Rheau committed the robbery and that the Defendant in some fashion aided, abetted, counseled, induced, or procured the commission of the crime.

To "aid and abet" means to intentionally help someone else commit a crime. To establish aiding and abetting, the government must prove beyond a reasonable doubt that:

First, Pierre S. Rheau committed the charged crime, and

Second, the Defendant willfully associated himself in some way with the crime, including the use of a dangerous weapon or device, and willfully participated in it as he would in something he wished to bring about.

Definition of "Willfully"

Now, an act is done "willfully" if done voluntarily and intentionally with the intent to do something the law forbids - that is to say, with a purpose to disregard or disobey the law.

Specifically this means that the Government must prove that the Defendant consciously shared Pierre S. Rheau's knowledge of the underlying criminal act and intended to help him. And the Government must prove that the Defendant shared Pierre S. Rheau's knowledge that a dangerous weapon or device would be used.

The defendant does not have to perform the underlying criminal act, be present when it is performed, or be aware of all the details of its execution to be guilty of aiding and abetting.

But, a general suspicion that an unlawful act may occur or that something criminal is happening is not enough. And the Defendant's mere presence at the scene of the crime, or his knowledge that a crime is being or has been committed is also not sufficient to establish aiding and abetting.

The Government must prove that the Defendant, David Lasseque, was a participant at the time of the offense or at an earlier time and not just a knowing spectator.

Lesser Included Offense

Count I – Aiding and Abetting an Armed Bank Robbery – contains what is called a "Lesser Included Offense." If you find the Defendant not guilty of aiding and abetting an armed bank robbery, you must proceed to consider whether you find the defendant guilty of the lesser offense of robbing a bank without either an assault or jeopardizing someone's life with a dangerous weapon or device. The lesser included offense requires the Government to prove beyond a reasonable doubt the first, second and third, but not the fourth element I described previously. In other words, the Government must prove everything except use of a dangerous weapon or device to assault someone or jeopardize someone's life.

Count Two – Conspiracy to Commit Bank Robbery

In Count II, the Government charges that the Defendant, David Lasseque, was a coconspirator with Pierre S. Rheau in a bank robbery.

A conspiracy is essentially an agreement of a combination of two or more persons to violate the law. One way of looking at it is as a partnership in crime. That means that the conspirator not only acts for himself, but acts for others as well. If they are acting together or if they have chosen and agreed to act together toward that common end then you may find a conspiracy.

A conspiracy is an agreement, spoken or unspoken. The conspiracy does not have to be a formal agreement or plan in which everyone involved sat down together and worked out all the details. But the government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the crime. Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy, but you may consider such factors.

For you to find the Defendant guilty of conspiracy, you must be convinced that the Government has proven each of the

following essential elements beyond a reasonable doubt:

First, an agreement existed between the Defendant and Pierre S. Rheau to commit a bank robbery;

Second, that the Defendant willfully joined in that agreement; and

Third, that either Pierre S. Rheau or the Defendant committed an overt act in an effort to further the purpose of the conspiracy.

Definition of "Willfully" - Conspiracy

Earlier, I explained the definition of the term "willfully" when instructing you on the concept of aiding and abetting. However, I want to give some additional guidance on the use of the term "willfully" as it applies to the charge of conspiracy.

To act "willfully" means to act voluntarily and intelligently and with the specific intent that the underlying crime be committed – that is to say, with bad purpose, either to disobey or disregard the law – not to act by ignorance, accident or mistake. The government must prove two types of intent beyond a reasonable doubt before a defendant can be said to have willfully joined a conspiracy: an intent to agree and an intent, whether reasonable or not, that the underlying crime be committed. Mere presence at the scene of a crime is not alone enough, but you may consider it among other factors. Intent may be inferred from the surrounding circumstances.

Proof that a defendant willfully joined in the agreement must be based upon evidence of his own words and/or actions. Since a conspiracy by its nature is often secret, neither the existence of the common agreement or the fact of the defendant's participation in it need be proven by direct evidence. It may be inferred by circumstantial evidence.

You need not find that the defendant agreed specifically

to, or knew about all the details of the crime, or that he participated in each act of the agreement or played a major role, but the Government must prove beyond a reasonable doubt that the Defendant knew the essential features and general aims of the venture.

Even if a defendant was not part of the agreement at the very start, he can be found guilty of conspiracy if the Government proves that he willfully joined the agreement later. On the other hand, a person who has no knowledge of a conspiracy, but simply happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Definition of "Overt Act"

An overt act is any act knowingly committed by one or more of the conspirators in an effort to accomplish some purpose of the conspiracy. Only one overt act has to be proven. The Government is not required to prove that the Defendant, David Lasseque, personally committed or knew about the overt act. It is sufficient if one conspirator committed one overt act at some time during the period of the conspiracy.

The Government does not have to prove that the conspiracy succeeded or was achieved. The crime of conspiracy is complete upon the agreement to commit the underlying crime.

Method of Assessing Evidence

Now that you know what it is that the Government must prove and the standard of proof to be applied, the next question is how do you determine whether the Government has proven these things beyond a reasonable doubt?

Obviously, you must make your determination solely from the evidence properly before you and from all reasonable and legitimate inferences to be drawn from that evidence.

The evidence that is properly before you consists of:

1. The testimony of the witnesses; and

2. The exhibits that I have admitted into evidence.

From that evidence, you may draw whatever conclusions are reasonable under the circumstances.

The evidence that is properly before you does not include:

1. Comments or statements by the attorneys;

2. Answers given by witnesses which I ordered stricken and instructed you to disregard;

3. Documents, photographs or other items which may have been referred to but have not been admitted into evidence. Since they are not proper evidence, you should not speculate or guess as to what they might say or show and you may not consider them except to the extent that, and for the purpose that, they may have

been read or shown to you during the course of the trial; or

4. Anything you may have heard or seen outside of this courtroom regarding the events in question or the participants in this case.

Notetaking

You were permitted to take notes in this case. However, please remember that not everything you write down is necessarily what was said and that your notes are not "evidence." Thus, when you return to the jury room to discuss the case, do not assume simply because something appears in somebody's notes that it necessarily took place in court. Instead, it is your collective memory that must control as you deliberate upon the verdict.

Witnesses - Credibility - General Factors

As to the testimony of witnesses, your principal task is to determine the credibility of the witnesses and the weight you will give to the testimony of each.

In making that determination, there are a number of factors that you may consider:

1. The opportunity or lack of opportunity the witness had to acquire knowledge of the facts about which the witness testified. In other words, was the witness in a position to have accurately perceived the facts that the witness related to you.

2. The reliability or unreliability of the witness's memory. In other words, did the witness have a clear recollection of what happened or was the witness's memory uncertain or unclear.

3. The witness's appearance on the stand. Did the witness appear to be a person who was telling the complete and unadulterated truth, or did it appear that the witness was slanting things one way or another either consciously or unconsciously.

4. The probability or improbability of the witness's testimony. Did what the witness have to say sound

reasonable or plausible, or did it appear to be highly unlikely or impossible.

5. Whether the witness had anything to gain or lose from the outcome of this case. In other words, was the witness totally impartial or did the witness have some stake in the outcome or some reason to favor one side or the other.

Witnesses - Number - Weight of Testimony

In evaluating the testimonial evidence, remember that you are not required to believe something to be a fact simply because a witness has stated it to be a fact and no one has contradicted what that witness said. If, in the light of all of the evidence, you believe that the witness is mistaken or has testified falsely or that he or she is proposing something that is inherently impossible or unworthy of belief, you may disregard that witness's testimony even in the absence of any contradictory evidence.

You should also bear in mind that it is not the number of witnesses testifying on either side of a particular issue that determines where the weight of the evidence lies. Rather, it is the quality of the witnesses' testimony that counts.

Thus, just because one witness testifies on one side of an issue and one witness testifies on the other side does not necessarily mean that you must consider the evidence evenly balanced. If you feel that one of the witnesses was more credible than the other, for whatever reason, you may find that the weight of the evidence lies on the side of that witness.

Similarly, just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the

greater number of witnesses. Once again, it is the credibility or quality of the testimony that determines where the weight of the evidence lies.

Witnesses - Credibility - Government Agents

The fact that a witness may be employed by a law enforcement agency does not, by itself, mean that you should give that witness's testimony any greater or any lesser weight simply because of that fact. You should assess the credibility and testimony of such a witness by applying the same factors as you would with respect to any other witness.

The Government as a Party

The mere fact that this case is brought in the name of the United States of America does not entitle the prosecution to any greater consideration than that accorded to the Defendant. By the same token, it does not mean that the prosecution is entitled to any less consideration. All parties, whether Government or individuals, stand as equals at the bar of justice.

Exhibits

In addition to assessing the credibility of the witnesses and the weight to be given to their testimony, you should also evaluate the exhibits which you will have with you in the jury room. Examine them and consider them carefully.

However, bear in mind that merely because an exhibit has been admitted into evidence does not mean that you are required to accept it at face value. Like the testimony of a witness, the significance of an exhibit or the weight you attach to it will depend upon your evaluation of that exhibit in light of all the facts and circumstances of the case.

Circumstantial Evidence

As I mentioned previously, you may consider only the evidence that is properly before you. However, that does not mean that, in determining the facts, you are limited to the statements of the witnesses or the contents of the exhibits.

In reaching your conclusions, you are permitted to draw, from facts which you find have been proven, such reasonable inferences as seem justified in the light of your experience.

Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in the case.

Such evidence is sometimes called circumstantial evidence. To put it another way, a fact may be proven either by direct evidence or by circumstantial evidence. Direct evidence includes such things as the testimony of an eyewitness who personally observed the fact in question or a photograph or document showing the actual thing described.

Circumstantial evidence consists of proof of a series of facts or circumstances from which the existence or nonexistence of another fact may be reasonably inferred.

The law makes no distinction between the weight to be given to direct and circumstantial evidence. However, it does require

that any fact required to convict the Defendant be proven beyond a reasonable doubt.

Not All Evidence, Not All Witnesses Needed

Although the Government is required to prove the Defendant guilty beyond a reasonable doubt, the Government is not required to present all possible evidence related to the case or to produce all possible witnesses who might have some knowledge about the facts of the case. In addition, as I have explained, a defendant is not required to present any evidence or produce any witnesses.

Conduct of Court - General

As I have said before, it is up to you to determine the facts in this case. You should not interpret anything I have said or done during this trial as expressing an opinion on my part as to what the facts in this case are. I have not intended to express any such opinion and you should not be concerned about what my opinions might be regarding the facts. That is a matter for you to decide.

Objections

During this trial there have been occasions when the attorneys have objected to a question that was asked of a witness. You are not to penalize either the Government or the Defendant for making objections to testimony which they believed to be not in conformance with the rules of evidence. It is their right to make such objections.

If I sustained the objection, it is important that you not speculate about what the answer to the objected-to question might have been. By sustaining the objection, the Court has determined that the evidence should not be considered by you.

Bias and Prejudice

Neither bias in favor of any person or cause, prejudice against any person or cause, nor sympathy of any kind should be permitted to influence you in the course of your deliberations.

All that any party here is entitled to, or, for that matter expects, is a verdict based upon your fair, scrupulous and conscientious examination of the evidence before you and your application of the law as I have explained it to you.

Verdict - Unanimity Required

In order to return a verdict in this case, all twelve of you must agree as to what that verdict will be. You cannot return a verdict of either guilty or not guilty against the Defendant unless your decision is unanimous.

Therefore there are two things that you should keep in mind during the course of your deliberations.

On the one hand, you should listen carefully to what your fellow jurors have to say and you should be open minded enough to change your opinion if you become convinced that it was incorrect.

On the other hand, you must recognize that each of you has an individual responsibility to vote for the verdict that you believe is the correct one based on the evidence that has been presented and the law as I have explained it to you. Accordingly, you should have the courage to stick to your opinion even though some or all of the other jurors may disagree as long as you have listened to their views with an open mind.

Selection of Foreperson and Duty to Deliberate

When you begin your deliberations, you should elect one member of the jury as your foreperson. The foreperson will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion during the course of the deliberations if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

Communications with the Court

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by the foreperson. No member of the jury should ever attempt to contact me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

Jury Recollection Controls – Rehearing Testimony

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

Occasionally, juries want to rehear testimony. Understand that in a relatively short trial, generally, your collective recollection should be sufficient for you to be able to deliberate effectively. However, if you feel that you need to rehear testimony, I will consider your request. However keep in mind that this is a time-consuming and difficult process, so if you think you need this, consider your request carefully and be as specific as possible.

Return of Verdict

A verdict form has been prepared for you by the Court. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the Court that you are ready to return to the courtroom.

Copy of Instructions

I have now completed my instructions to you on the law that governs your deliberations. I will send into the jury room a written copy of my instructions. You are reminded, however, that the law is as I have given it to you from the bench; the written copy is merely a guide to assist you.