

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT 22 P 1:41
DISTRICT OF VERMONT

CLERK BY KAK
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UNITED STATES OF AMERICA :
 :
v. :
 :
PETER HOLLAND :
_____ :

File No. 1:04-CR-114

CHARGE TO THE JURY

Members of the Jury:

This is a criminal prosecution brought by the United States against defendant Peter Holland. I remind you of the function of a grand jury indictment. An indictment is merely a formal way to accuse a defendant of a crime preliminary to trial.

The indictment is not evidence. It does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the nature of the charge against the defendant.

The defendant has pleaded not guilty to the charge in the indictment. You have been chosen and sworn as jurors in this case to determine the facts that have been raised by the allegations of the indictment and the denial made by the defendant when he pleaded not guilty.

Reasonable Doubt

The law presumes a defendant to be innocent of a crime. Therefore, although accused, a defendant begins the trial with a "clean slate," that is, with no evidence against him. Furthermore, the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against a defendant. So the presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of a defendant's guilt after careful and impartial consideration of the evidence in the case.

The government is not required to prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

You must remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any

witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

So if, after careful and impartial consideration of all the evidence in this case, you have a reasonable doubt that the defendant is guilty of the offense charged in the indictment, then you must acquit him of that offense. Unless the government proves, beyond a reasonable doubt, that the defendant has committed each and every element of the offense charged in the indictment, you must find him not guilty of that offense.

As I have instructed you, the law presumes a defendant is innocent of the charge against him. The presumption of innocence lasts throughout the trial and ends only if you, the jury, find beyond a reasonable doubt that the defendant is guilty. Should the government fail to prove the guilt of the defendant beyond a reasonable doubt, you must acquit him.

Government as a Party

You are to perform the duty of finding the facts without bias or prejudice as to any party. You are to perform your final duty with complete fairness and impartiality.

The case is important to the government, for the enforcement of criminal laws is one of the government's duties. Equally, this case is important to the defendant, who is charged with a serious crime.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater or lesser consideration than that accorded any other party to a case. All parties, whether government or individual, stand as equals before the Court.

Evidence

You have seen and heard the evidence produced in this trial, and it is the sole province of you the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits that have been admitted, and any facts which may have been admitted or stipulated.

I would now like to call to your attention certain guidelines by which you are to evaluate the evidence. You may consider two types of evidence: direct and circumstantial. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts or circumstances pointing to the existence or non-existence of certain facts.

The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.

Note that you may convict the defendant on the basis of circumstantial evidence alone, but only if that evidence convinces you of his guilt beyond a reasonable doubt.

Evidence: Testimony and Arguments Excluded

I caution that you should entirely disregard any testimony which has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence.

Anything you have seen or heard outside the courtroom is not evidence and must be entirely disregarded. You are to consider only the evidence in this case. But in your consideration of the evidence, you are not limited merely to the statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from proven facts, reasonable inferences you feel are justified in light of your experiences.

Credibility of Witnesses

You, as jurors, are the sole judges of the credibility of witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness, since you may accept or reject the testimony of any witness, in whole or in part. In weighing the testimony of the witnesses you have heard, you should consider their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if any; their resentment or anger toward the defendant, if any; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper.

The weight of the evidence is not determined by the number of witnesses testifying. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or

may not cause you to discredit such testimony. Two or more persons may well hear or see things differently, or may have a different point of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance, or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood.

Defendant Not Testifying

The defendant did not testify in this case. Under the law, he has no obligation to testify or to present any other evidence because it is the government's burden to prove a defendant guilty beyond a reasonable doubt. That burden remains with the prosecution and never shifts to a defendant. You may not draw an inference of any kind because he did not testify, nor may you consider it in any way against the defendant in your deliberations.

INSTRUCTIONS OF LAW

Having told you the general guidelines by which you will consider the evidence in this case, I will now instruct you on the law that is applicable to your determinations in this case. It is your duty as jurors to follow the law as stated to you in these instructions and to apply the rules of law to the facts you find from the evidence.

You will not be faithful to your oath as jurors if you find a verdict that is contrary to the law I give to you. However, it is the sole province of you, the jury, to determine the facts in this case. I do not, by any instructions given to you, intend to persuade you in any way as to any question of fact.

The parties in this case have a right to expect you will carefully and impartially consider all the evidence in the case, you will follow the law as I state it to you, and you will reach a just verdict.

Bank Robbery

The defendant is charged with bank robbery. The federal bank robbery statute, 18 U.S.C. § 2113(a), provides in part that "whoever, by force or violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association" is guilty of a crime.

Elements of Bank Robbery

To prove the charge of bank robbery, the government must establish each of the following three elements beyond a reasonable doubt.

First, on or about the date charged in the indictment, the Vermont Development Credit Union was a federally insured credit union.

Second, the defendant took money that belonged to or was in the care, custody, control, management or possession of the credit union from the person or in the presence of another.

Third, the defendant did so by acting in an intimidating manner.

In this case, the parties have entered into a stipulation as to the first two elements and have agreed that: (1) on or about the date charged in the indictment, the Vermont Development Credit Union was a federally insured credit union; and (2) the defendant took money that belonged to or was in the care, custody, control, management or possession of the credit union from the person or in the presence of another. You should consider these facts as proven beyond a reasonable doubt.

Your inquiry, therefore, must focus only on the third element, which requires the government to prove beyond a

reasonable doubt that the defendant took the money from another person by acting in an intimidating manner.

The phrase "intimidating manner" means the defendant did or said something that would make an ordinary reasonable person fear bodily harm. It is not necessary for the government to prove the victim was actually frightened to establish that the defendant acted in an intimidating manner. Your focus should be on the defendant's behavior. The government does not have to prove the defendant's behavior caused or could have caused great terror or panic, but it must show that an ordinary person would have feared bodily harm because of defendant's behavior. Further, the government does not have to prove the defendant made explicit threats of bodily harm. If you find the defendant confronted the credit union employee in such a way that it would reasonably create a fear of bodily harm, that is sufficient.

Evidence that an unusually timid victim was actually intimidated by the defendant's conduct is not, by itself, proof that the defendant engaged in intimidating conduct, although you may consider evidence that the bank employee was actually placed in fear of bodily harm as evidence of how a reasonable person would have reacted. The government must prove, beyond a reasonable doubt, that an ordinary person, not just the unusually

timid victim, would have experienced fear of bodily harm because of what the defendant did or said.

CONCLUSION

I caution you, members of the jury, that you are here to determine the guilt or innocence of the defendant before you today solely from the evidence in this case. I remind you that the mere fact that this defendant has been indicted is not evidence against him. Also, the defendant is not on trial for any act or conduct or offense not alleged in the indictment.

You should know that the punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the judge and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

It is your duty as jurors to consult with one another and to deliberate. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. Do not hesitate to re-examine your own views and change your opinion if you think that you were wrong. But also do not surrender your honest convictions about the case solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous.

I appoint _____ as your foreperson.

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. When you have reached a verdict, your foreperson will record the verdict, sign and date the verdict form, and you will return to the courtroom.

If during your deliberations you wish to communicate with the Court, please put your message or question in writing, signed by the foreperson, and pass the note to the court security officer who will then bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can speak with you. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

Copies of this charge will go with you into the jury room for your use.