

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
v.	:	File No. 1:06CR21-01
	:	
REAL GAGNON	:	
_____	:	

CHARGE TO THE JURY

Members of the Jury:

This is a criminal prosecution brought by the United States against Real Gagnon. 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.

Mr. Gagnon has pled not guilty to the charges in the indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact that have been raised by the allegations of the indictment and the denials made by the defendant when he pled 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. Reasonable doubt can arise from the evidence or from a lack of evidence.

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 the 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 serious crimes.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded any other party to a case. By the same token, it is entitled to no less consideration. 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 all the 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.

Similar Acts Evidence

The government has offered evidence tending to show that, on a different occasion, the defendant engaged in conduct similar to the charges in the indictment.

Let me remind you that the defendant is not on trial for committing any act not alleged in the indictment. Accordingly, you may not consider this evidence of similar acts as a substitute for proof that the defendant committed one or more of the crimes charged. Nor may you consider this evidence as proof that the defendant has a criminal personality or bad character. The evidence of other, similar acts, was admitted for a limited purpose, and you may only consider it for that limited purpose.

If you determine the defendant committed the acts charged in the indictment, and similar acts as well, then you may, but you need not, draw an inference that in doing the acts charged in the indictment, the defendant acted knowingly and intentionally, and not because of some mistake, accident, or other innocent reason. Also, you may, but need not, infer that the acts charged in the indictment and the other conduct were part of a common plan or scheme committed by the defendant. However, you may not consider this evidence for any other purpose. Specifically, you may not consider it as evidence that the defendant is of bad character or has a propensity to commit crime.

Evidence: Testimony and Arguments Excluded

I caution you 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 in the case.

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 facts which you find have been proven, such reasonable inferences as you feel are justified in light of your experiences.

Evidence: "On or About" -- Explained

Certain counts in the indictment charge that the offense alleged was committed "on or about" a certain date.

Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on dates reasonably near the date alleged in the indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

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. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a large number of witnesses. 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. You should also attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

Expert Witnesses

I have permitted certain witnesses to express their opinions about matters that are in issue. A witness may be permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience, and training. Such testimony is presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing this opinion testimony, you may consider the witness's qualifications, opinions, the reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness's testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. Nor should you substitute it for your own reasons, judgment and common sense. The determination of the facts in this case rests solely with you.

Law Enforcement Witnesses

You have heard the testimony of law enforcement officers. The fact that a witness may be employed by the federal or state government as a law enforcement officer does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the ground that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witness and to give that testimony whatever weight, if any, you find it deserves.