



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

MIRVAT SAFADY

Case No. 5:11-cr-115

JURY CHARGE

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

This case is a criminal prosecution brought by the United States against the defendant Mirvat Safady. The indictment charges MIRVAT SAFADY in two counts.

COUNT ONE

On or about September 3, 2011, within the District of Vermont, defendant MIRVAT SAFADY, did knowingly bring an alien into the United States, knowing that such person was an alien, at a place other than a designated port of entry or a place otherwise designated by the Secretary of the Department of Homeland Security.

COUNT TWO

On or about September 3, 2011, within the District of Vermont, defendant MIRVAT SAFADY, knowing and in reckless disregard of the fact that an alien has come to the United States in violation of law, did knowingly transport such alien within the United States by means of transportation in furtherance of such violation of law.

ROLE OF INDICTMENT

At this time, I would like to remind you of the function of an indictment. An indictment is merely a formal way to accuse a defendant of a crime preliminary to trial. An indictment is not evidence. The indictment 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 charges against the defendant. The defendant has pleaded not guilty to the counts 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 denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice against the defendant, or the prosecution.

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE

The government must prove the defendant guilty beyond a reasonable doubt. The question is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof

beyond a reasonable doubt must, therefore, 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. A reasonable doubt is not a whim, speculation, or suspicion.

However, a reasonable doubt may arise from a lack of evidence. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy.

In a criminal case, the burden is at all times upon the government to prove guilt beyond a reasonable doubt. The law does not require the government to prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to a defendant, which means that it is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt. 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.

If, after fair and impartial consideration of all the evidence against a defendant, you have a reasonable doubt, it is your duty to find that defendant not guilty. On the other hand, if, after fair and impartial consideration of all the evidence, you are satisfied of the defendant's guilt beyond a reasonable doubt, you should vote to convict.

The law presumes that a defendant is innocent of the charges against him or her. The presumption of innocence lasts throughout the trial and during your deliberations. The presumption of innocence ends only if you, the jury, find beyond a reasonable doubt that a defendant is guilty. Should the government fail to prove the guilt of a defendant beyond a reasonable doubt, you must find that defendant not guilty.

EVIDENCE

You have seen and heard the evidence produced in this trial and it is the sole province of 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 into evidence, 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.

There are two types of evidence which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something she or he knows by virtue of her or his own senses—something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You infer on the basis of reason and experience and common sense from one established fact, the existence or non-existence of some other fact. For example, if you were to see cow tracks in a pasture, that would be circumstantial evidence that there are or were cows in the pasture.

Circumstantial evidence is of no less value than direct evidence. Circumstantial evidence alone may be sufficient evidence of guilt.

You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the defendant's guilt beyond a reasonable doubt, you must find her not guilty.

STRICKEN TESTIMONY AND ARGUMENTS EXCLUDED

I caution you that you should entirely disregard any testimony or exhibit that 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. By the rulings the court made in the course of the trial, I did not intend to indicate to you any of my own preferences, or to influence you in any manner regarding how you should decide the case. The attorneys have a duty to object to evidence they believe is not admissible. You must not hold it against either side if an attorney made an objection.

Anything you have seen or heard outside the courtroom is not evidence, and must be entirely disregarded. It would be a violation of your oath as jurors to consider anything outside the courtroom in your deliberations. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. 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 proved, such reasonable inferences as you feel are justified in light of the evidence. However, if any juror has specialized knowledge, expertise, or information with regard to the facts and circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

ADMISSIONS BY A DEFENDANT

There has been evidence that the defendant made certain statements in which the government claims she admitted certain facts.

In deciding what weight to give the defendant's statements, you should first examine with great care whether each statement was made and whether, in fact, it was voluntarily and understandingly made. I instruct you that you are to give the statements such weight as you feel they deserve in light of all the evidence.

CREDIBILITY OF WITNESSES

You, as jurors, are the sole judges of the credibility of the 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, because 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, if any, toward the defendant; 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. You may accept all of it, some of it, or reject it altogether.

As a general matter, in evaluating the credibility of each witness, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering

may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

This is not to suggest that any witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

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 larger 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 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 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.

In this case you have heard testimony from a number of witnesses. I am now going to give you some guidelines for your determinations regarding the testimony of the various types of witnesses presented in this case.

LAW ENFORCEMENT WITNESSES

You have heard the testimony of law enforcement officials in this case. The fact that a witness may be employed by the federal, state, or local government as a law enforcement official does not mean that his or her testimony is deserving of more or less consideration or greater or lesser weight than that of a civilian witness.

At the same time, it is proper for defense counsel to try to attack the credibility of a law enforcement witness on the grounds 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 to that testimony whatever weight, if any, you find it deserves.

PRIOR INCONSISTENT STATEMENTS OF A NON-PARTY WITNESS

You may find that a witness has made statements outside of this trial that are inconsistent with the statements that the witness gave here. You may consider the out-of-court statements not made under oath only to determine the credibility of the witness and not as evidence of any facts contained in the statements. As to out-of-court statements that were made under oath, such as statements made in prior testimony, you may consider them for all purposes, including for the truth of the facts contained therein.

RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE

You may not consider the race, religion, national origin, sex, or age of the defendant or any of the witnesses in your deliberations over the verdict or in the weight given to any evidence.

BIAS, PREJUDICE, AND EQUALITY BEFORE THE COURT

You are to perform the duty of finding the facts without bias or prejudice toward any party. You are to perform this duty in an attitude of complete fairness and impartiality.

This case is important to the parties and the court. You must give it the fair and serious consideration which it deserves.

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 to any other party to a case. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals before the court.

DEFENDANT NOT TESTIFYING

You may have observed that the defendant did not testify in this case. A defendant has a constitutional right not to do so. She does not have to testify, and the government may not call her as a witness. A defendant's decision not to testify raises no presumption of guilt and does not permit you to draw any unfavorable inference. Therefore, in determining whether a defendant is guilty or not guilty of the crime charged, you are not to consider, in any manner, the fact that the defendant did not testify. Do not even discuss it in your deliberations.

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

Having explained the general guidelines by which you will evaluate the evidence in this case, I will now instruct you with regard to 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 that 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 that I give to you.

However, it is the sole province of 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 that you will carefully and impartially consider all the evidence in the case, that you will follow the law as I state it to you, and that you will reach a just verdict.

THE ESSENTIAL ELEMENTS OF THE OFFENSES

COUNT ONE – THE INDICTMENT AND THE STATUTE

The indictment charges the defendant with knowingly bringing an alien into the United States in violation of section 1324(a)(1)(A)(i) of Title 8 of the United States Code.

Section 1324(a)(1)(A)(i) provides as follows:

Any person who –

(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United

States and regardless of any future official action which may be taken with respect to such alien is guilty of a crime.

COUNT 1: BRINGING AN ALIEN INTO THE UNITED STATES
ELEMENTS OF THE OFFENSE

In order to prove the crime of knowingly bringing an alien to the United States, the government must establish beyond a reasonable doubt each of the following elements:

First, that Safwan Abdulla was an alien;

Second, that the defendant knew Safwan Abdulla was an alien; and

Third, that the defendant knowingly brought an alien, in any manner whatsoever, to the United States at a place not designated by the Secretary of the Department of Homeland Security, or a place other than a designated port of entry.

Fourth, that the defendant acted willfully.

COUNT 1: BRINGING AN ALIEN INTO THE UNITED STATES
FIRST ELEMENT - ALIEN STATUS

The first element that the government must prove beyond a reasonable doubt is that Safwan Abdulla was an alien at the time of the offense alleged in the indictment.

An alien is a person who is not a natural-born or naturalized citizen, or a national of the United States. A "national of the United States" is a person born in a United States territory.

COUNT 1: BRINGING AN ALIEN INTO THE UNITED STATES
SECOND ELEMENT - KNOWLEDGE OF THE PERSON'S ALIEN STATUS

The second element of the offense which the government must prove beyond a reasonable doubt is that the defendant knew that Safwan Abdulla was an alien.

Whether or not the defendant had this knowledge is a question of fact to be determined by you on the basis of all the evidence. If you find that the evidence establishes that the defendant actually knew that Safwan Abdulla was an alien, then this element is satisfied.

COUNT 1: BRINGING AN ALIEN INTO THE UNITED STATES
THIRD ELEMENT - BRINGING AN ALIEN TO THE UNITED STATES

The third element that the government must prove beyond a reasonable doubt is that the defendant knowingly brought an alien, in any manner whatsoever, to the United States at a place not designated by the Secretary of the Department of Homeland Security or a place other than a designated port of entry.

The word “bring” should be used in its everyday sense as accompanying or arranging for the alien to enter the United States.

An act is done “knowingly” only if it is done purposely and deliberately, and not because of accident, mistake, negligence, or other innocent reasons.

The statute provides that the law is violated by anyone who brings an alien to the United States “in any manner whatsoever.” Therefore, the particular method of transportation is not relevant.

The statute also provides that it is not relevant that the alien may have received prior official authorization to enter the United States or that the alien may have been eligible to attain legal status in the United States after entering this country. This element is satisfied if the defendant brought the alien to the United States at someplace other than a designated port of entry.

COUNT 1: BRINGING AN ALIEN INTO THE UNITED STATES
FOURTH ELEMENT - WILLFULNESS

The fourth element of the offense which the government must prove beyond a reasonable doubt is that the defendant acted willfully.

To satisfy this element, the government must prove that the defendant brought an alien to the United States at a place other than a designated port of entry with the intent to violate the law.

COUNT TWO – THE INDICTMENT AND THE STATUTE

The indictment charges the defendant with knowingly transporting an illegal alien within the United States in violation of section 1324(a)(1)(A)(ii) of Title 8 of the United States Code.

Section 1324(a)(1)(A)(ii) provides as follows:

Any person who –

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of the law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law is guilty of a crime.

COUNT 2: TRANSPORTING AN ALIEN
ELEMENTS OF THE OFFENSE

In order to prove the crime of knowingly transporting an illegal alien within the United States, the government must establish beyond a reasonable doubt each of the following elements:

First, that Safwan Abdulla was in the United States in violation of the law;

Second, that the defendant knew, or acted in reckless disregard of the fact, that the person was an alien who had come to the United States in violation of the law;

Third, that the defendant transported the alien within the United States; and

Fourth, that the defendant acted willfully in furtherance of the alien's violation of the law.

COUNT 2: TRANSPORTING AN ALIEN
FIRST ELEMENT - ALIEN IN UNITED STATES IN VIOLATION OF LAW

The first element which the government must prove beyond a reasonable doubt is that Safwan Abdulla is an alien who had entered the United States in violation of the law.

An alien is a person who is not a natural-born or naturalized citizen, or a national of the United States. A "national of the United States" is a person born in a United States territory.

COUNT 2: TRANSPORTING AN ALIEN
SECOND ELEMENT-KNOWLEDGE OR RECKLESS DISREGARD

The second element of the offense which the government must prove beyond a reasonable doubt is that the defendant knew that the alien she transported had come to the United States in violation of the law, or that the defendant acted in reckless disregard of that fact.

Whether or not the defendant had this knowledge is a question of fact to be determined by you on the basis of all the evidence. An act is done knowingly only if it is done purposely and deliberately, and not because of accident, mistake, negligence, or other innocent reasons. If you find that the evidence established, beyond a reasonable

doubt, that the defendant actually knew of the alien's illegal status, then this element is satisfied.

Even if the evidence does not establish actual knowledge, this element is satisfied if you find that the government has proved, beyond a reasonable doubt, that the defendant acted with reckless disregard of the facts concerning the alien's status.

The phrase "reckless disregard of the facts" means deliberate indifference to facts which, if considered and weighed in a reasonable manner, indicate the highest probability that the alleged alien was in fact an alien and was in the United States unlawfully.

COUNT 2: TRANSPORTING AN ALIEN
THIRD ELEMENT-TRANSPORTING OR MOVING AN ILLEGAL ALIEN

The third element of the offense which the government must prove beyond a reasonable doubt is that the defendant transported an alien who had come to the United States in violation of the law.

If you find, based on all the evidence, that the government has proved, beyond a reasonable doubt, that the defendant transported someone who was an alien who had come to the United States in violation of law, this element has been satisfied.

COUNT 2: TRANSPORTING AN ALIEN
FOURTH ELEMENT-TRANSPORTATION IN
FURTHERANCE OF ALIEN'S VIOLATION OF LAW

The fourth element of the offense which the government must prove beyond a reasonable doubt is that the defendant acted willfully in furtherance of the alien's violation of the law.

In order to establish this element, the government must prove that the defendant knowingly and intentionally transported the alien in furtherance of the alien's unlawful presence in the United States. In other words, the evidence must show a direct and substantial relationship between the transportation and its furtherance of the alien's unlawful presence in the United States. Transportation of illegal aliens is not, by itself, a violation of the statute if it is merely incidental to the alien's presence in the United States, for the law proscribes such conduct only when it is in furtherance of the alien's unlawful presence.

JUROR NOTE TAKING

During this trial, you have been provided with pencil and paper, and some of you have taken notes. As I explained at the beginning of the trial, all jurors should be given equal attention during the deliberations regardless of whether or not they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. You may not use your notes as authority to persuade your fellow jurors as to what a witness did or did not say. In your deliberations you must rely upon your collective memory of the evidence in deciding the facts of the case. If there is any difference between your memory of the evidence and your notes, you may ask that the record of the proceedings be read back. If a difference still exists, the record must prevail over your notes.

RECOLLECTION OF EVIDENCE

Let me remind you that in deliberating upon your verdict, you are to rely solely and entirely upon your own memory of the testimony.

If, during your deliberations, you are unable to recall with any degree of accuracy, a particular part of the testimony, or a part of these instructions, you may do the following:

- (1) Write out your question, and have the foreperson sign it;
- (2) Knock on the door of the jury room; and
- (3) Deliver your note to the Court Officer, to give to me.

After the attorneys have been consulted, and the record has been reviewed, I shall decide what action to take, and I shall tell you my ruling.

CONCLUSION

I caution you, members of the jury, that you are here to determine whether the defendant before you today is not guilty or guilty solely from the evidence in this case. I remind you that the mere fact that a defendant has been indicted is not evidence against her. Also, a defendant is not on trial for any act or conduct or offense not alleged in the Indictment. Nor are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

You should not consider the consequences of a guilty or not guilty determination. The punishment provided by law for the offenses charged in the Indictment is a matter exclusively within the responsibility of the judge, and should never be considered by the jury in any way in arriving at an impartial verdict.

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. Do not, however, 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 regarding each element of the offense.

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. If a vote is to be taken, your foreperson will ensure that it is done. A verdict form has been prepared for your conclusions. After you have reached an agreement, the foreperson will record a verdict of guilty or not guilty as to the defendant on each count. Your foreperson will then sign and date the verdict form and you will return to the courtroom. In all other respects, a foreperson is the same as any other juror. His or her votes do not count more than any other member of the jury.

If, during your deliberations you should desire to communicate with the court, please put your message or question in writing signed by the foreperson, and pass the note to the Court Officer who will bring it to my attention. I will then confer with the attorneys and I will 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. You should also never communicate the subject matter of your note or your deliberations to any member of the court's staff.

I appoint _____ as your foreperson.

Dated at Rutland, in the District of Vermont this 10th day of May, 2012.

A handwritten signature in black ink, consisting of several fluid, overlapping loops and strokes, positioned above a horizontal line.

Christina Reiss, Chief Judge
United States District Judge