

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2018 DEC -6 PM 12: 09

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UNITED STATES OF AMERICA, )  
)  
v. )  
)  
ANGELO PETER EFTHIMIATOS, )  
)  
Defendant. )

Case No. 2:18-cr-00049-cr

**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 ANGELO PETER EFTHIMIATOS. The indictment charges ANGELO PETER EFTHIMIATOS with knowingly and willfully piloting an aircraft without an airman's certificate. The indictment reads as follows:

1. At all times relevant to the indictment:
  - a. The Federal Aviation Administration ("FAA"), an agency of the United States Department of Transportation, was responsible for the safety of all persons occupying and operating domestic aircraft. This agency was further responsible for certifying and regulating the pilots of civil aircraft. The FAA discharged this responsibility by issuing regulations that, among other things, determine the qualifications of domestic pilots. Specifically in order to lawfully pilot a civil aircraft, an individual must obtain an FAA Pilot Certificate.
  - b. On or about July 1, 2014, the FAA revoked ANGELO EFTHIMIATOS's pilot certificate, number 3212215. The revocation order advised ANGELO EFTHIMIATOS that no

future application for an airman's certificate would be accepted by the FAA and that his certificate was revoked for life.

2. Between on or about April 9, 2018 and on or about April 10, 2018, in the District of Vermont and elsewhere, the defendant ANGELO EFTHIMIATOS knowingly and willfully served in any capacity as an airman without an airman's certificate authorizing him to serve in that capacity, in that he piloted N4563F from Nantucket, MA (ACK) to North Clarendon, Vermont (RUT).

The indictment charges the defendant with violating § 46306(b)(7) of Title 49 of the United States Code. Section 46306(b)(7), in pertinent part, provides that a person who "knowingly and willfully serves or attempts to serve in any capacity as an airman without an airman's certificate authorizing the individual to serve in that capacity" has violated the law.

#### **ROLE OF THE 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 before trial. An indictment is not evidence. An 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 charge against the defendant. The defendant has pleaded not guilty to the count 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 in 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 government.

#### **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. 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 element of the crime 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.

The law presumes the defendant is innocent of the charge against him. The presumption of innocence is a piece of evidence that lasts throughout the trial and during your deliberations. The presumption of innocence 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 find the defendant not guilty.

If, after a fair and impartial consideration of all the evidence against the defendant, you have a reasonable doubt, then it is your duty to find the defendant not guilty. On the other hand, if, after a 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.

### **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 that have been admitted or stipulated. I would now like to call your attention to certain guidelines by which you are to evaluate the evidence.

There are two types of evidence that you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something he or she knows by virtue of his or her own senses—something

he or she has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit.

Circumstantial evidence is evidence that tends to prove a disputed fact by proof of other facts. You infer on the basis of reason, 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, then you must find him not guilty. Your verdict must be based solely on the evidence introduced at trial, or the lack thereof.

#### **REDACTED AND EXCERPTED EXHIBITS**

Some of the evidence has been redacted or excerpted to remove information that is not for your consideration in this case. The parties have agreed on these redactions and excerpts. You should entirely disregard the fact that information has been redacted or excerpted, and focus solely on the evidence produced in this trial.

#### **GOVERNMENT NOT REQUIRED TO UTILIZE PARTICULAR INVESTIGATIVE METHODS**

The government is not required to pursue any particular investigative method or methods in the investigation or prosecution of a crime. I remind you, however, that the government is always required to prove the defendant's guilt beyond a reasonable doubt.

#### **STRICKEN TESTIMONY, ATTORNEYS' STATEMENTS AND OBJECTIONS, AND THE COURT'S RULINGS**

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.

### **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.

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 or the most evidence. Remember, a defendant in a criminal prosecution has no obligation to present any evidence or call any 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.

### **INTEREST IN THE OUTCOME**

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 may create 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 has 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 only 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.

### **LAW ENFORCEMENT WITNESSES**

You have heard the testimony of law enforcement officials. 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 an ordinary 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 a law enforcement witness and to give that testimony whatever weight, if any, you find it deserves.

### **ADMISSIONS BY THE DEFENDANT**

There has been evidence that the defendant made certain statements in which the government claims he 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.

**USE OF RECORDINGS AND TRANSCRIPTS**

The government was permitted to display a transcript it prepared containing the government's interpretation of what is heard on the audio recordings which have been admitted into evidence. The transcript was provided as an aid or guide to assist you, the jury, in listening to the recordings; however, the transcripts themselves are not evidence. It is the recordings that are evidence, and you should rely upon your own interpretation of what you heard on the recordings. If you think you heard something different on the recording than what was on the transcript, then what you heard on the recording must control.

**DEFENDANT NOT TESTIFYING**

You may have observed that the defendant did not testify in this case. The defendant has a constitutional right not to do so. He does not have to testify, and the government may not call him as a witness. The defendant's decision not to testify raises no presumption of guilt and does not permit you to draw any unfavorable inference. A defendant is never required to prove that he or she is not guilty. Therefore, in determining the defendant's guilt or innocence 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.

**OTHER ACTS**

You are only to determine whether the defendant is guilty or not guilty of the charge in the indictment. Your determination must be made only from the evidence admitted by the court in this case. The defendant is not on trial for any conduct or offense not charged in the indictment. You should consider evidence about other acts, only as they relate to the charge against the defendant.

**JURORS' EXPERIENCE OR SPECIALIZED KNOWLEDGE**

Anything you have seen or heard outside the courtroom is not evidence, and must be disregarded entirely. 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.

**JURORS' SYMPATHY, PASSION, OR PREJUDICE**

In arriving at a verdict, you must not permit yourselves to be influenced in the slightest degree by sympathy, passion, or prejudice, or any other emotion in favor of or against either party. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, or prejudice.

**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. You must not allow any of your personal feelings about the nature of the crime charged to interfere with your deliberations, or to influence the weight given to any of the evidence.

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



**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.

**SERVING AS AN AIRMAN WITHOUT AN AUTHORIZING AIRMAN'S  
CERTIFICATE**

The indictment charges the defendant with knowingly and willfully serving and attempting to serve in any capacity as an airman without an airman's certificate authorizing him to serve in that capacity, in violation of Title 49, United States Code, Section 46306(b)(7). Section 46306(b)(7) applies to aircraft not being used to provide "air transportation."

**ELEMENTS OF THE OFFENSE**

In order to prove the defendant guilty of knowingly and willfully serving and attempting to serve in any capacity as an airman without an airman's certificate authorizing him to serve in that capacity, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant served as an airman in any capacity;

Second, at the time the defendant served as an airman, he did not possess an airman's certificate authorizing him to serve in that capacity;

Third, the defendant acted knowingly and willfully; and

Fourth, the aircraft was not being used to provide air transportation.

**FIRST ELEMENT – SERVES AS AN AIRMAN**

The first element of the charged offense requires you to determine if the government has proven beyond a reasonable doubt that on or about the date in the indictment, Angelo Efthimiatis served as an airman in any capacity. A person who pilots an aircraft serves as an airman.

**SECOND ELEMENT – AIRMAN’S CERTIFICATE**

To establish the second element of the charged offense, the government must prove beyond a reasonable doubt that, at the time the defendant Angelo Efthimiatis served as an airman, he did not possess an airman’s certificate authorizing him to serve in that capacity. An airman’s certificate is a certificate issued by the Federal Aviation Administration when it determines, after investigation, that an individual is qualified for, and is physically able to perform the duties related to the position authorized in the certificate. A certificate authorizing a person to pilot an aircraft is a type of airman’s certificate.

**THIRD ELEMENT – KNOWINGLY AND WILLFULLY**

The third element of the charged offense requires the government to prove beyond a reasonable doubt that Angelo Efthimiatis acted “knowingly” and “willfully.”

A person acts “knowingly” if he acts intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness. Whether the defendant acted knowingly may be proven by the defendant’s conduct and by all of the facts and circumstances surrounding the case. In this case, the government must prove beyond a reasonable doubt that, at the time he piloted a plane, Angelo Efthimiatis knew that the FAA had revoked his airman’s certificate.

A person acts “willfully” if he acts with knowledge that one’s conduct is unlawful and with the intent to do something the law forbids, that is to say with the bad purpose to disobey or to disregard the law. The government does not have to prove the defendant

knew that criminal law prohibited his actions. A person's conduct is not "willful" if it was due to negligence, inadvertence, or mistake.

#### **FOURTH ELEMENT – AIR TRANSPORTATION**

The fourth element of the charged offense requires you to determine whether the government has proven beyond a reasonable doubt that, on the date charged in the indictment, the aircraft involved in the allegation was not being used in air transportation. There are two sets of rules governing criminal aviation offenses. One set of rules deals with flights in "air transportation," a legal term of art that means transportation of passengers or property by aircraft for money, or the transportation of mail by aircraft. The other set of rules deals with flights that do not involve transportation of passengers or property for money, or transportation of the mail. The defendant is charged under the second type of statute. Therefore, to prove the fourth element of the charged offense, the government must prove beyond a reasonable doubt that during the flight alleged in the indictment, the aircraft was not being used to transport mail and not being used to transport passengers or property for compensation.

#### **UNANIMOUS VERDICT REQUIRED**

To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous regarding each essential element of the crime charged.

#### **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 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 will decide what action to take, and I will 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 him. 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 offense 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.


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. If the verdict form varies in any way from the instructions provided within this jury charge, I instruct you that you are to follow the instructions provided within this jury charge.

After you have reached an agreement, the foreperson will record a verdict of guilty or not guilty. 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 vote does 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 [REDACTED] as your foreperson.

Dated at Burlington, in the District of Vermont, this 5<sup>th</sup> day of December, 2018.

  
Christina Reiss, District Judge  
United States District Court