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UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIM. NO. 1:95CR24-01
	:	
ARTHUR MASSEI	:	
_____	:	

CHARGE TO THE JURY

Members of the Jury:

This is a criminal prosecution brought by the United States against defendant Arthur Massei. The indictment charges the defendant with escaping from custody on or about March 2, 1995 from the Chittenden Regional Correctional Facility in violation of 18 U.S.C. § 751(a).

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Role of the Indictment

At this time, I remind you of the function of a grand jury indictment. An indictment is merely a formal way to accuse the 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 all of the charge 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 pleaded not guilty. You are to perform this duty without bias or prejudice against the defendant or the prosecution.

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 the defendant's guilt after careful and impartial consideration of all 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 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.

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. The 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 an offense charged in the indictment, then you must acquit the defendant 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 the defendant not guilty of that offense.

As I have instructed you, the law presumes a defendant is innocent of the charges 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 a defendant beyond a reasonable doubt, you must acquit that defendant.

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

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. The evidence that you will consider in reaching your verdict consists only of the sworn testimony of witnesses, the stipulations made by the parties, and all exhibits that have been received in evidence.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you must accept the stipulation as evidence and regard the fact as proven.

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 bald 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.

Inference

During the trial you have heard the attorneys use the term "inference", and in their arguments they may have asked you to infer, on the basis of your reason, experience and common sense, from one or more established facts, the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact which you know exists.

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. Innocent misrecollection or failure of recollection is not an uncommon experience. 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.

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 a matter of prime concern to the community. 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 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.

Defendant's Testimony

The defendant in a criminal case has an absolute right under the Constitution not to testify.

The fact that the defendant did not testify must not be discussed or considered by the jury in any way when deliberating and in arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his privilege under the Constitution and did not testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of allying any witnesses or of producing any evidence.

Prior Inconsistent Statements of a Non-Party Witness

You may find that a witness has made statements outside of this trial which are inconsistent with the statements that the witness made 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 statement. As to out-of-court statements 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.

Law Enforcement Witness

You have also 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 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 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.

INSTRUCTIONS OF LAW

Having told you the general guidelines by which you will evaluate 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 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.

All 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.

Elements of the Charged Offense

The indictment charges the defendant with escaping from custody in violation of section 751 of Title 18 of the United States Code. In relevant part, 18 U.S.C. § 751 provides:

Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or commission, or from the custody of any officer or employee of the United States pursuant to a lawful arrest shall [be guilty of an offense against the United States].

To meet its burden of proof, the government must prove beyond a reasonable doubt each of the following elements:

1. The defendant was in custody in an institution or facility in which he was confined by direction of the Attorney General for his conviction in the United States District Court for bank fraud;
2. The defendant left custody without permission; and,
3. The defendant knew he did not have permission to leave federal custody and his failure to return to federal custody was willful.

The first element which the government must prove beyond a reasonable doubt is that the defendant was in custody in an institution or facility in which he was confined by direction of

the Attorney General as a result of his conviction in the United States District Court for bank fraud. In this regard, "custody" is defined as the detention of an individual by virtue of lawful authority.

The second element the government must prove beyond a reasonable doubt is that the defendant departed from custody without permission. In this case, the government contends the defendant failed to return to custody following a day furlough. In this regard, the willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to an institution or facility designated by the Attorney General, constitutes an escape from custody.

The third element that the government must prove beyond a reasonable doubt is that the defendant knew he did not have permission to leave federal custody and that his failure to return was willful. To act "knowingly" is to act voluntarily and intentionally and not because of mistake, accident or other innocent reason. To act "willfully" means to act with knowledge that one's conduct is unlawful and with the intent to do something the law forbids, that is, with a bad purpose to disobey or disregard the law. A defendant's conduct is not "willful" if it is due to negligence, inadvertence or mistake.

Motive

Proof of motive is not a necessary element of the crime with which the defendant is charged.

Proof of motive does not establish guilt, nor does want of proof of motive establish that a defendant is not guilty.

If the guilt of a defendant is shown beyond a reasonable doubt, it is immaterial what the motive for the crime may be -- or whether any motive be shown, but the presence or absence of motive is a circumstance which you may consider as bearing on whether the defendant did or did not commit the crime with which he is charged.

Evidence of Prior Acts or Offenses

You have also heard evidence relating to the defendant's possession of counterfeit identification and to the fact that the defendant led law enforcement officials on a high speed chase. Evidence that an act was done or that an offense was committed by the defendant at some other time is not, of course, any evidence or proof whatever that, at another time, the defendant performed a similar act or committed a similar offense, including the offense charged in this indictment.

Evidence of a similar act or offense may not be considered by the jury in determining whether the defendant actually committed the act charged in this indictment. Nor may such evidence be considered for any other purpose whatever, unless the jury first finds beyond a reasonable doubt from other evidence in the case, standing alone, that the defendant committed the act charged in this indictment.

If the jury should find beyond a reasonable doubt from other evidence in the case that the defendant did the act alleged in the one count of this indictment, then the jury may consider evidence as to an alleged earlier act of like nature in determining the state of mind or intent with which the defendant actually committed the act charged in this indictment.

The defendant is not on trial for any acts or crimes not alleged in the indictment. Nor may a defendant be convicted of the

crimes charged even if you were to find that he committed other crimes--even crimes similar to the one charged in this indictment.

Good Faith Defense

The good faith of the defendant is a complete defense to the charge against him because good faith on the part of the defendant is, simply, inconsistent with a finding of knowingly and willfully leaving custody as alleged by the government.

A person who acts on a belief or an opinion honestly held is not punishable under 18 U.S.C. § 751 merely because the belief or opinion turns out to be inaccurate, incorrect or wrong. An honest mistake in judgment or an error in management does not rise to the level of knowledge and willfulness required by the statute.

The law is intended to subject to criminal punishment only those people who knowingly and willfully attempt to violate the law. While the term "good faith" has no precise definition, it means, among other things, a belief or opinion honestly held, an absence of malice or ill will, and an intention to comply with known legal duties.

In determining whether or not the government has proven that the defendant acted knowingly and willfully, or whether the defendant acted in good faith, the jury must consider all of the evidence in the case bearing on the defendant's state of mind.

The burden of proving good faith does not rest with the defendant because the defendant does not have an obligation to prove anything in this case. It is the government's burden to prove to you, beyond a reasonable doubt, that the defendant acted knowingly and willfully when he allegedly escaped from custody.

If the evidence in the case leaves the jury with a reasonable doubt as to whether the defendant acted in good faith, then the jury must acquit the defendant on that count.

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 the 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. Neither 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 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 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. A verdict form has been prepared for your convenience. after you have reached agreement as to each of the counts contained in the Indictment, you will have your foreperson record a verdict of guilty or not guilty as to each count of the Indictment. Your foreperson will then 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 marshal who will then bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so 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 any time.

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

Dated at Rutland, Vermont, this _____ day of June,
1996.

J. Garvan Murtha
Chief Judge