

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

NASIR HUSSAIN

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Case No. 2:24-cr-110

JURY CHARGE

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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 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 charges against the defendant. The defendant has pleaded not guilty to 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.

ROLE OF THE COURT, THE JURY, AND COUNSEL

Your first duty is to consider and decide the factual issues of this case. You are the sole and exclusive judges of the facts. By the rulings which I made during the course of the trial, I did not intend to indicate to you or to express my own views about this case.

You as jurors weigh the evidence, you determine the credibility or believability of the witnesses, you resolve any conflicts there may be in the evidence, and you draw any reasonable inferences or conclusions that you believe are justified by the facts as you find them. In a moment, I will define the word “evidence” and instruct you on how to assess it, including how to judge whether the witnesses have been honest and should be believed.

Your second duty is to apply the law that I give you to the facts. Do not single out one instruction alone, but consider the instructions as a whole. You should not be concerned with whether you agree with any instruction given by the court. You may have a different opinion as to what the law ought to be, but it would be a violation of your sworn duty as jurors to base your verdict on any version of the law other than what is contained in the instructions given by the court.

The lawyers may have referred to some of the governing rules of law in their argument. However, if you find any differences between the law as stated by the lawyers and the law as stated by me in these instructions, you must follow my instructions. It is the lawyers’ job to point out the things that are most significant or most helpful to their side of the case. But remember that their statements regarding the law are not evidence in this case.

In addition, nothing I say in these instructions should be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts; rather, that job is yours alone. You must perform your duty as jurors with complete fairness and impartiality. All parties expect that you will diligently examine all of the evidence, follow the law as it is now being given to you, and reach a just verdict regardless of the consequences.

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.

SYMPATHY, BIAS, PASSION, OR PREJUDICE

In arriving at a verdict, you must not permit yourselves to be influenced in the slightest degree by sympathy, bias, passion, or prejudice, or any other emotion in favor of or against either party. The law forbids you from being governed by mere sentiment, conjecture, sympathy, passion, or prejudice. 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. You are to perform your duty in an attitude of complete fairness and impartiality.

RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE

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

EQUALITY BEFORE THE COURT

All parties, whether government or individuals, stand as equals before the court.

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.

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 the evidence, conflicts in the evidence, or a lack of evidence. It is not an excuse to avoid the performance of an unpleasant duty, and it is not sympathy. If you have a reasonable doubt, you must find the defendant not guilty even if you think that the charge is probably true.

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 charges 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. Your verdict must be based solely on the evidence introduced at trial, or the lack thereof. 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.

**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. 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.

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. He does not have to testify, and the government may not call him 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 the defendant is guilty or not guilty of the crime charged, you are not to consider, in any manner, the fact that he did not testify. Do not even discuss it in your deliberations.

“ON OR ABOUT” EXPLAINED

The indictment charges that the offense 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 a date 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.

IMPERMISSIBLE TO INFER PARTICIPATION FROM ASSOCIATION

You may not infer that the defendant is guilty of participating in criminal conduct merely from the fact that he associated with other people who were guilty of wrongdoing.

COUNT ONE: FALSE STATEMENTS IN CONNECTION WITH IMMIGRATION DOCUMENTS

Count One of the indictment charges the defendant with making a false statement in connection with an immigration document.

The relevant statute on this subject is Title 18 of the United States Code, section 1546(a). It provides in relevant part: “Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder...” shall be guilty of an offense.

COUNT ONE: ELEMENTS OF THE OFFENSE

For you to find the defendant guilty of the crime of making a false statement of material fact in an immigration document, you must be convinced the government has proved each of the following beyond a reasonable doubt:

First: That the defendant knowingly made a false statement;

Second: That the statement was material;

Third: That the statement was made under oath or as permitted under penalty of perjury; and

Fourth: That the statement was made on an application or other document required by the immigration laws or regulations of the United States.

COUNT ONE: KNOWINGLY DEFINED

You have been instructed that in order to sustain its burden of proof, the government must prove that the defendant acted knowingly. 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.

COUNT ONE: CONSCIOUS AVOIDANCE: DELIBERATELY CLOSING EYES

In determining whether the defendant acted knowingly, you may consider whether the defendant deliberately closed his eyes to what would otherwise have been obvious to him. If you find beyond a reasonable doubt that the defendant acted with a conscious purpose to avoid learning the truth that the statement was false, then this element may be satisfied. However, guilty knowledge may not be established by demonstrating that the defendant was merely negligent, foolish or mistaken.

If you find that the defendant was aware of a high probability that the statement was false and that the defendant acted with deliberate disregard of the facts, you may find that the defendant acted knowingly. However, if you find that the defendant actually believed that the statement was true, he may not be convicted.

It is entirely up to you whether you find that the defendant deliberately closed his eyes and any inferences to be drawn from the evidence on this issue.

COUNT ONE: MATERIALITY DEFINED

The second element of the charged offense is that the charged false statement was material. A statement is “material” if it has a natural tendency to influence, or is capable of influencing, a decision of the governmental agency to which it is addressed.

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 pen 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.

QUESTIONS OF EVIDENCE

If, during your deliberations, you have a question, you may do the following:

1. Write out your question, and have the foreperson or other juror 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, I will decide what action to take, and I will tell you my ruling either in writing or orally in the courtroom.

INFORMAL IMMUNITY OF GOVERNMENT WITNESS

You have heard the testimony of witnesses who have been promised that in exchange for testifying truthfully, completely, and fully, they will not be prosecuted for any crimes that they may have admitted either here in court or in interviews with the prosecutors. This promise was not a formal order of immunity by the court, but was arranged directly between the witness and the government.

The government is permitted to make these kinds of promises and is entitled to call as witnesses people to whom these promises are given. You are instructed that you may convict a defendant on the basis of such a witness' testimony alone, if you find that his or her testimony proves the defendant guilty beyond a reasonable doubt.

However, the testimony of a witness who has been promised that they will not be prosecuted should be examined by you with greater care than the testimony of an ordinary witness. You should scrutinize it closely to determine whether or not it is effected in such a way as to place guilt upon the defendant in order to further the witness' own interests; for, such a witness, confronted with the realization that they can win their own freedom by helping to convict another, has a motive to falsify their testimony. Such testimony should be received by you with appropriate caution and healthy skepticism, and you may give it such weight, if any, as you believe it deserves.

WITNESS—NOT PROPER TO CONSIDER GUILTY PLEA

You have heard testimony from a government witness who pled guilty previously to different charges. You are instructed that you are to draw no conclusions or inferences of any kind about the guilt of the defendant on trial from the fact that a prosecution witness pled guilty to different charges. That witness's decision to plead guilty was a personal decision about her own guilt. It may not be used by you in any way as evidence against or unfavorable to the defendant on trial here.

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.

Again, 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.