

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

JUL 25 2007


CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN HUGHES,

Defendant.

No. CR 06-50080-01-KES

**FINAL
INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

FINAL INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 - PROOF OF INTENT OR KNOWLEDGE

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of the defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

FINAL INSTRUCTION NO. 3 - DELIBERATE INDIFFERENCE

You may find that the defendant acted knowingly if you find beyond a reasonable doubt that the defendant was aware of a high probability that he was not permitted to purchase furs in the state of South Dakota and that he deliberately avoided learning the truth. The element of knowledge may be inferred if the defendant deliberately closed his eyes to what would otherwise have been obvious to him.

You may not find that the defendant acted knowingly, however, if you find that the defendant was simply careless. A showing of negligence, mistake, or carelessness is not sufficient to support a finding of knowledge.

FINAL INSTRUCTION NO. 4 - COUNT 1 - KNOWING LACEY ACT VIOLATION

Count 1 of the indictment charges that, on or about January 19, 2004, in the District of South Dakota, John Hughes knowingly engaged in conduct involving the sale and purchase of wildlife with a market value in excess of \$350, namely the purchase of three bobcats from Jason Hamill, that defendant knowingly received, acquired, purchased, and transported the wildlife in interstate commerce from South Dakota to Montana, and that defendant knew the wildlife was possessed and transported in violation of and in a manner unlawful under the laws and regulations of the state of South Dakota.

Elements

For you to find John Hughes guilty of a Knowing Lacey Act Violation, as charged in **Count 1** of the indictment, the prosecution must prove each of the following three essential elements beyond a reasonable doubt:

One, that the defendant knew that the wildlife had been possessed or purchased in violation of or in a manner unlawful under the laws of the state of South Dakota;

It is unlawful under South Dakota law for any person to purchase or contract to purchase for a commercial purpose the raw skins of fur-bearing animals or unskinned fur-bearing animals, without a fur dealer's license.

South Dakota law requires that nonresident fur dealer licensees buying furs from individuals or other than resident licensed fur dealers shall forward to the South Dakota Department of Game, Fish and Parks at Pierre, at thirty-day intervals, duplicate invoices of such purchases.

Two, that the market value of the wildlife actually possessed, transported, or sold exceeded \$350; and

Three, that the defendant transported, received, acquired, or purchased in interstate commerce the wildlife by knowingly engaging in conduct that involved its sale or purchase.

For you to find John Hughes guilty of a Knowing Lacey Act Violation, as charged in **Count 1** of the indictment, the prosecution must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

Lesser Included Offense - Lacey Act Violation

If your verdict under this instruction is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on this instruction, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of Lacey Act Violation under this instruction. The crime of Lacey Act Violation, a lesser included offence of the crime charged in Count 1 of the indictment, has the following two essential elements:

One, that the defendant knowingly transported, received, acquired, or purchased wildlife in interstate commerce; and

Two, that the defendant in the exercise of due care should have known that the wildlife had been possessed, transported, or sold in

**violation of or in a manner unlawful under the laws of the state of South
Dakota.**

Due care means that degree of care which a reasonably prudent person would exercise under the same or similar circumstances.

For you to find the defendant guilty of the crime of Lacey Act Violation, the prosecution must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

FINAL INSTRUCTION NO. 5 - COUNT 2 - KNOWING LACEY ACT VIOLATION

Count 2 of the indictment charges that, on or about January 20, 2004, in the District of South Dakota, John Hughes knowingly engaged in conduct involving the sale and purchase of wildlife with a market value in excess of \$350, namely the purchase of one bobcat, eleven coyotes, and one badger from Jake Nelson, that defendant knowingly received, acquired, purchased, and transported the wildlife in interstate commerce from South Dakota to Montana, and that defendant knew the wildlife was possessed and transported in violation of and in a manner unlawful under the laws and regulations of the state of South Dakota.

Elements

For you to find John Hughes guilty of a Knowing Lacey Act Violation, as charged in **Count 2** of the indictment, the prosecution must prove each of the following three essential elements beyond a reasonable doubt:

One, that the defendant knew that the wildlife had been possessed or purchased in violation of or in a manner unlawful under the laws of the state of South Dakota;

The relevant laws of the state of South Dakota are set out in Final Instruction Number 4.

Two, that the market value of the wildlife actually possessed, transported, or sold exceeded \$350; and

Three, that the defendant transported, received, acquired, or purchased in interstate commerce the wildlife by knowingly engaging in conduct that involved its sale or purchase.

For you to find John Hughes guilty of a Knowing Lacey Act Violation, as charged in **Count 2** of the indictment, the prosecution must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

Lesser Included Offense - Lacey Act Violation

If your verdict under this instruction is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on this instruction, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of Lacey Act Violation under this instruction. The crime of Lacey Act Violation, a lesser included offence of the crime charged in Count 2 of the indictment, has the following two essential elements:

One, that the defendant knowingly transported, received, acquired, or purchased wildlife in interstate commerce; and

Two, that the defendant in the exercise of due care should have known that the wildlife had been possessed, transported, or sold in violation of or in a manner unlawful under the laws of the state of South Dakota.

Due care means that degree of care which a reasonably prudent person would exercise under the same or similar circumstances.

For you to find the defendant guilty of the crime of Lacey Act Violation, the prosecution must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

FINAL INSTRUCTION NO. 6 - COUNT 3 - KNOWING LACEY ACT VIOLATION

Count 3 of the indictment charges that, on or about January 20, 2004, in the District of South Dakota, John Hughes knowingly engaged in conduct involving the sale and purchase of wildlife with a market value in excess of \$350, namely the purchase of twenty-six coyotes, three bobcats, two racoons, one fox, and one skunk from Jim McConaghy, that defendant knowingly received, acquired, purchased, and transported the wildlife in interstate commerce from South Dakota to Montana, and that defendant knew the wildlife was possessed and transported in violation of and in a manner unlawful under the laws and regulations of the state of South Dakota.

Elements

For you to find John Hughes guilty of a Knowing Lacey Act Violation, as charged in **Count 3** of the indictment, the prosecution must prove each of the following three essential elements beyond a reasonable doubt:

One, that the defendant knew that the wildlife had been possessed or purchased in violation of or in a manner unlawful under the laws of the state of South Dakota;

The relevant laws of the state of South Dakota are set out in Final Instruction Number 4.

Two, that the market value of the wildlife actually possessed, transported, or sold exceeded \$350; and

Three, that the defendant transported, received, acquired, or purchased in interstate commerce the wildlife by knowingly engaging in conduct that involved its sale or purchase.

For you to find John Hughes guilty of a Knowing Lacey Act Violation, as charged in **Count 3** of the indictment, the prosecution must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

Lesser Included Offense - Lacey Act Violation

If your verdict under this instruction is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on this instruction, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of Lacey Act Violation under this instruction. The crime of Lacey Act Violation, a lesser included offence of the crime charged in Count 3 of the indictment, has the following two essential elements:

One, that the defendant knowingly transported, received, acquired, or purchased wildlife in interstate commerce; and

Two, that the defendant in the exercise of due care should have known that the wildlife had been possessed, transported, or sold in violation of or in a manner unlawful under the laws of the state of South Dakota.

Due care means that degree of care which a reasonably prudent person would exercise under the same or similar circumstances.

For you to find the defendant guilty of the crime of Lacey Act Violation, the prosecution must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

FINAL INSTRUCTION NO. 7 - COUNT 4 - KNOWING LACEY ACT VIOLATION

Count 4 of the indictment charges that, on or about January 20, 2004, in the District of South Dakota, John Hughes knowingly engaged in conduct involving the sale and purchase of wildlife with a market value in excess of \$350, namely the purchase of two bobcats from Glen Sterling, that defendant knowingly received, acquired, purchased, and transported the wildlife in interstate commerce from South Dakota to Montana, and that defendant knew the wildlife was possessed and transported in violation of and in a manner unlawful under the laws and regulations of the state of South Dakota.

Elements

For you to find John Hughes guilty of a Knowing Lacey Act Violation, as charged in **Count 4** of the indictment, the prosecution must prove each of the following three essential elements beyond a reasonable doubt:

One, that the defendant knew that the wildlife had been possessed or purchased in violation of or in a manner unlawful under the laws of the state of South Dakota;

The relevant laws of the state of South Dakota are set out in Final Instruction Number 4.

Two, that the market value of the wildlife actually possessed, transported, or sold exceeded \$350; and

Three, that the defendant transported, received, acquired, or purchased in interstate commerce the wildlife by knowingly engaging in conduct that involved its sale or purchase.

For you to find John Hughes guilty of a Knowing Lacey Act Violation, as charged in **Count 4** of the indictment, the prosecution must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

Lesser Included Offense - Lacey Act Violation

If your verdict under this instruction is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on this instruction, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of Lacey Act Violation under this instruction. The crime of Lacey Act Violation, a lesser included offence of the crime charged in Count 4 of the indictment, has the following two essential elements:

One, that the defendant knowingly transported, received, acquired, or purchased wildlife in interstate commerce; and

Two, that the defendant in the exercise of due care should have known that the wildlife had been possessed, transported, or sold in violation of or in a manner unlawful under the laws of the state of South Dakota.

Due care means that degree of care which a reasonably prudent person would exercise under the same or similar circumstances.

For you to find the defendant guilty of the crime of Lacey Act Violation, the prosecution must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

FINAL INSTRUCTION NO. 8 - COUNT 6 - KNOWING LACEY ACT VIOLATION

Count 6 of the indictment charges that, on or about January 20, 2004, in the District of South Dakota, John Hughes knowingly engaged in conduct involving the sale and purchase of wildlife with a market value in excess of \$350, namely the purchase of seven bobcats from Gary Howell, that defendant knowingly received, acquired, purchased, and transported the wildlife in interstate commerce from South Dakota to Montana, and that defendant knew the wildlife was possessed and transported in violation of and in a manner unlawful under the laws and regulations of the state of South Dakota.

Elements

For you to find John Hughes guilty of a Knowing Lacey Act Violation, as charged in **Count 6** of the indictment, the prosecution must prove each of the following three essential elements beyond a reasonable doubt:

One, that the defendant knew that the wildlife had been possessed or purchased in violation of or in a manner unlawful under the laws of the state of South Dakota;

The relevant laws of the state of South Dakota are set out in Final Instruction Number 4.

Two, that the market value of the wildlife actually possessed, transported, or sold exceeded \$350; and

Three, that the defendant transported, received, acquired, or purchased in interstate commerce the wildlife by knowingly engaging in conduct that involved its sale or purchase.

For you to find John Hughes guilty of a Knowing Lacey Act Violation, as charged in **Count 6** of the indictment, the prosecution must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

Lesser Included Offense - Lacey Act Violation

If your verdict under this instruction is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on this instruction, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of Lacey Act Violation under this instruction. The crime of Lacey Act Violation, a lesser included offence of the crime charged in Count 6 of the indictment, has the following two essential elements:

One, that the defendant knowingly transported, received, acquired, or purchased wildlife in interstate commerce; and

Two, that the defendant in the exercise of due care should have known that the wildlife had been possessed, transported, or sold in violation of or in a manner unlawful under the laws of the state of South Dakota.

Due care means that degree of care which a reasonably prudent person would exercise under the same or similar circumstances.

For you to find the defendant guilty of the crime of Lacey Act Violation, the prosecution must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

FINAL INSTRUCTION NO. 9 - DISMISSAL DURING TRIAL OF CHARGE

At the beginning of the trial I told you that the defendant was accused of six different crimes, all knowing violations of the Lacey Act. Since the trial started, however, one of these charges has been disposed of, the one having to do with the alleged purchase of wildlife from Rod Wheaton and contained in Count 5. That charge is no longer before you, and the only crimes that the defendant is charged with now are Counts 1 through 4 and Count 6. You should not guess about or concern yourselves with the reason for this disposition. You are not to consider this fact when deciding if the Government has proved, beyond a reasonable doubt, Counts 1 through 4 and Count 6.

FINAL INSTRUCTION NO. 10 - THEORY OF DEFENSE

John Hughes is accused of buying pelts in South Dakota on January 19-20, 2004, without a fur dealer's license. John Hughes' defense is that he believed he had a fur dealer's license at the time he purchased these pelts.

In order for you, the jury, to find defendant guilty of a Knowing Lacey Act Violation, as charged in Counts 1 through 6, you must find beyond a reasonable doubt that the defendant knew that he did not have a fur dealer's license on those dates. If you do not find beyond a reasonable doubt that the defendant knew that he did not have a fur dealer's license on those dates, you must find him not guilty of the Knowing Lacey Act Violation offense and go on to consider the lesser include offense of Lacey Act Violation.

FINAL INSTRUCTION NO. 11 - DEFENDANT'S PRIOR SIMILAR ACTS

You have heard evidence that the defendant failed to file reports in Wyoming as required as an out-of-state fur buyer. You may consider this evidence only if you unanimously find it is more likely true than not true. This is a lower standard than proof beyond a reasonable doubt. If you find that this evidence is more likely true than not true, you may consider it to help you decide defendant's knowledge, motive, and absence of mistake. You should give it the weight and value you believe it is entitled to receive. If you find that it is not more likely true than not true, then you shall disregard it.

Remember, even if you find that the defendant may have committed similar acts in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of prior acts only on the issue of knowledge, motive, and absence of mistake.

FINAL INSTRUCTION NO. 12 - PRESUMPTION OF INNOCENCE AND BURDEN
OF PROOF

John Hughes is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with Mr. Hughes throughout the trial. That presumption alone is sufficient to find him not guilty. The presumption of innocence may be overcome as to Mr. Hughes only if the prosecution proves, beyond a reasonable doubt, each element of a crime charged against him.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution.

Unless the prosecution proves beyond a reasonable doubt that John Hughes committed each and every element of an offense charged in the indictment against him, you must find him not guilty of that offense.

FINAL INSTRUCTION NO. 13 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence or lack of evidence produced by the prosecution. A reasonable doubt is a doubt based upon reason and common sense and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

FINAL INSTRUCTION NO. 14 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. Your verdict as to the defendant must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on an offense charged against him, then the defendant should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on an offense

charged, then your vote should be for a verdict of guilty against the defendant on that charge, and if all of you reach that conclusion, then the verdict of the jury must be guilty for the defendant on that charge. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of a crime charged.

Remember also that the question before you can never be whether the government wins or loses the case. The government, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

FINAL INSTRUCTION NO. 15 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, if individual defendants are guilty, the sentence to be imposed is my responsibility. You may not consider the punishment of John Hughes in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

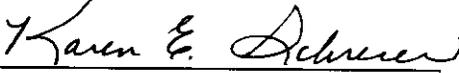
Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. **Remember that you should not tell anyone—including me—how your votes stand numerically.**

Fourth, your verdict must be based solely on the evidence and on the law in these instructions. **The verdict, whether not guilty or guilty, must be unanimous.** Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each

of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Dated July 25, 2007.


Karen E. Schreier
Karen E. Schreier
Chief Judge