

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
NOV 27 2012
[Signature]
CLERK

UNITED STATES OF AMERICA,

CR 12-10024-03

Plaintiff,

JURY INSTRUCTIONS

-vs-

CHARLENE WANNA,

Defendant.

INSTRUCTION NO. 1

Ladies and gentlemen of the jury, it is my duty now to explain the rules of law you must apply to this case.

You as jurors are the sole judges of the facts. But it is your duty to follow the law stated in these instructions, and to apply that law to the facts as you find them from the evidence before you. It would be a violation of your sworn duty to base your verdict upon any rules of law other than the ones given you in these instructions, regardless of your personal feelings as to what the law ought to be.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

INSTRUCTION NO. 2

You have been chosen and sworn as jurors to try the issues of fact presented by the allegations of the indictment and the denial made by the defendant in her plea of “not guilty.” You are to perform this duty without bias or prejudice, because the law does not permit jurors to be governed by sympathy or public opinion. The accused and the public expect that you will carefully and impartially consider all of the evidence and will follow the law as stated by the Court, in order to reach a just verdict, regardless of the consequences to any party.

INSTRUCTION NO. 3

The indictment in this case charges the defendant with misapplication of funds from an Indian tribal organization.

The defendant has pleaded not guilty to this charge.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Therefore, the defendant, even though charged, begins the trial with no evidence against her. This presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

There is no burden upon the defendant to prove that she is innocent.

INSTRUCTION NO. 4

I have mentioned the word “evidence.” The evidence in this case consists of the testimony of witnesses, the documents and other things received as exhibits and the facts that have been stipulated -- that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony and questions that I struck from the record, or told you to disregard, are not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, you were instructed that some evidence was received for a limited purpose only, and you must follow that instruction.

INSTRUCTION NO. 5

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. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 6

There are two types of evidence from which you may find the truth as to the facts of a case--direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of the defendant. The law makes no distinction between the weight 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 the defendant not guilty.

INSTRUCTION NO. 7

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 8

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of a greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

INSTRUCTION NO. 9

You have received evidence that Jacqueline Wanna hopes to receive a reduced sentence on criminal charges in return for cooperation with the Government in this case. Jacqueline Wanna entered into a “plea agreement” with the Government which provides that in return for assistance, the Government may file a motion for reduction in sentence. If the prosecutor handling this witness’s case believes the witness provided substantial assistance, that prosecutor can file a motion to reduce the sentence. The judge has no power to reduce a sentence for substantial assistance unless the Government, acting through the United States Attorney, files a such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the Government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

You may give the testimony of this witness such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by hope of receiving a reduced sentence is for you to decide.

INSTRUCTION NO. 10

You have heard evidence that Lloyd LaBelle, Jr., Jacqueline Wanna, and Tammie Strutz have made plea agreements with the Government. Their guilty pleas cannot be considered by you as any evidence of this defendant's guilt.

INSTRUCTION NO. 11

The crime of misapplication of funds from an Indian tribal organization as charged in Count I of the indictment has four essential elements, which are:

1. That on or about between January 21, 2007, and January 16, 2009, in the District of South Dakota, the defendant voluntarily, intentionally, and knowingly embezzled, stole, misapplied, or permitted to be misapplied, or converted to her own use or the use of another, monies, funds, or assets.
2. That the monies, funds, or assets belonged to the Heipa/Veblen District and had a value in excess of \$1,000.00.
3. That the Heipa/Veblen District was an Indian tribal organization.
4. That the defendant did so with the intent to deprive the owner of the use or benefit of the monies, funds, or assets.

For you to find the defendant guilty of this crime as charged in Count I of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

The term "Indian tribal organization" means any tribe, band, or community of Indians which is subject to the laws of the United States relating to Indian affairs or any corporation, association, or group which is organized under any of such laws.

INSTRUCTION NO. 13

Intent 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 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.

INSTRUCTION NO. 14

One of the issues in this case is whether Charlene Wanna acted in good faith. Good faith is a complete defense to the charge made against Charlene Wanna if good faith is inconsistent with knowingly embezzling, stealing, misapplying or converting to her own use or the use of another monies, funds or assets, knowingly being one of the essential elements of the charge. Evidence which establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish the required fraudulent intent. On the other hand, the government does not have to prove that the defendant knew that her claimed acts were unlawful.

The burden of proving good faith does not rest with the defendant. It is the burden of the government to prove, along with all the other elements of the offense charged, beyond a reasonable doubt, that the defendant acted knowingly.

INSTRUCTION NO. 15

A person may also be found guilty of a crime even if she personally did not do every act constituting the offense charged, if she aided and abetted the commission of that crime.

In order to have aided and abetted the commission of a crime a person must, before or at the time the crime was committed,

- (1) have known the crime was being committed or going to be committed;
- (2) have knowingly acted in some way for the purpose of causing, encouraging or aiding the commission of the crime; and
- (3) have acted knowingly and intentionally.

For you to find the defendant guilty of misapplication of funds from an Indian tribal organization by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the essential elements of the crime were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NO. 16

You will note that the indictment charges that the offenses were committed “on or about between” certain dates. The proof need not establish with certainty the exact date or dates of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date or dates reasonably near the dates alleged.

INSTRUCTION NO. 17

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

A verdict form has been prepared for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form to state the verdict upon which you unanimously agree, and then return with your verdict to the courtroom.

INSTRUCTION NO. 18

The verdict must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges--judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 19

If you have questions, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury.

You will note from the oath about to be taken by the marshal that he, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached a unanimous verdict.

INSTRUCTION NO. 20

It is proper to add a final caution.

Nothing that I have said in these instructions -- and nothing that I have said or done during the trial, including questions asked by the court -- have been said or done to suggest to you what I think your verdict should be.

What the verdict shall be is your exclusive duty and responsibility.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

UNITED STATES OF AMERICA,	*	CR 12-10024-03
	*	
Plaintiff,	*	
	*	
-vs-	*	
	*	VERDICT
CHARLENE WANNA,	*	
	*	
Defendant.	*	
	*	

Please return a verdict by placing an "X" in the space provided.

COUNT I

We, the jury in the above entitled action, as to the crime of misapplication of funds from an Indian tribal organization as charged in Count I of the indictment find Charlene Wanna:

_____ NOT GUILTY _____ GUILTY

Dated this _____ day of November, 2012.

Foreperson