

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EVERETT CONDON,
And SEPTEMBER WALOKE,

Defendants.

3:16-CR-30148-01-02-RAL

FINAL JURY INSTRUCTIONS

INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions. The instructions I am about to give you now are in writing and will be available to you in the jury room.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important.

All instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 3

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 that I struck from the record, or told you to disregard, is not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

When you were instructed that evidence was received for a limited purpose, you must follow that instruction.

INSTRUCTION NO. 4

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 of any witness 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 any law enforcement officer as you would any other witness.

INSTRUCTION NO. 5

The indictment in this case charges that the defendants committed the crime of harboring or concealing a person from arrest. The defendants have pleaded not guilty to this charge.

The indictment is simply the document that formally charges the defendants with the crime for which they are on trial. The indictment is not evidence of anything. At the beginning of the trial, I instructed you that you must presume the defendants to be innocent. Thus, the defendants began the trial with a clean slate, with no evidence against them. The presumption of innocence alone is sufficient to find each defendant not guilty. This presumption can be overcome only if the government proved during the trial, beyond a reasonable doubt, each element of a crime charged.

Keep in mind that you must give separate consideration to the evidence about each individual defendant. Each defendant is entitled to be treated separately, and you must return a separate verdict for each defendant.

There is no burden upon defendants to prove that they are innocent. Instead, the burden of proof remains on the government throughout the trial. Accordingly, the fact that a defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 6

Section 1071 of Title 18 of the United States Code provides, in pertinent part, that it is unlawful if a person “harbors or conceals any person for whose arrest a warrant or process has been issued under the provisions of any law of the United States, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person.”

INSTRUCTION NO. 7

The crime of concealing a person from arrest, as charged in the indictment, has four essential elements, which are:

***One*, a federal warrant had been issued for the arrest of Tyson Curtis LeCompte, a/k/a Tyson Garreaux, under the law of the United States;**

***Two*, the defendant knew the warrant had been issued;**

***Three*, with that knowledge, the defendant, on or about between the 19th day of October, 2016, and the 20th day of October, 2016, in Ziebach County, in the District of South Dakota, harbored or concealed Tyson Curtis LeCompte, a/k/a Tyson Garreaux; and**

***Four*, the defendant intended to prevent the discovery or arrest of Tyson Curtis LeCompte, a/k/a Tyson Garreaux.**

If all of these elements have been proved beyond a reasonable doubt as to a defendant, then you must find that defendant guilty of the crime charged; otherwise you must find that defendant not guilty of this crime.

INSTRUCTION NO. 8

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 the 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.

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his actions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 9

Harboring and concealment include any physical act—such as, but not limited to, providing food, lodging, refuge or care to a person; or hiding, secreting or providing that person with other assistance—to aid in avoiding detection and apprehension.

The defendants cannot be convicted simply because they failed to reveal information to law enforcement about a fugitive or simply because they were associated with or friendly with anyone who may have acted in violation of the law.

INSTRUCTION NO. 10

You have heard evidence that Braxtyn Garreau has entered into a plea agreement in an unrelated case with the Government, that she has cooperated with the Government, that she hopes to receive a lesser sentence as a result, and that her sentencing is scheduled in the future. Her testimony was received in evidence and may be considered by you. You may give her testimony such weight as you think it deserves. Whether or not her testimony may have been influenced by her agreement with the Government is for you to determine.

INSTRUCTION NO. 11

Carlee Condon is not available as a witness at this trial. You should not speculate as to why she is unavailable or infer anything from the fact that she is unavailable to testify.

INSTRUCTION NO. 12

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 13

Counsel for the Government, counsel for the defendants, and the defendants have agreed or stipulated to certain facts.

The defendants have not, by entering these stipulations, admitted their guilt of the offense charged, and you may not draw any inference of guilt from the stipulations. The only effect of these stipulations is to establish the facts contained in those stipulations.

INSTRUCTION NO. 14

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 15

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

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, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, 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.

Fifth, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a smart phone or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, Snapchat, LinkedIn, Instagram, YouTube, or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Sixth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. 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.

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<p>UNITED STATES OF AMERICA, Plaintiff, vs. EVERETT CONDON, And SEPTEMBER WALOKE, Defendants.</p>	<p>3:16-CR-30148-01-02-RAL VERDICT FORM</p>
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find the defendant Everett Condon, _____ (fill in either “not guilty” or “guilty”) of the crime of concealing a person from arrest as charged in the indictment.
2. We find the defendant September Waloke, _____ (fill in either “not guilty” or “guilty”) of the crime of concealing a person from arrest as charged in the indictment.

Dated September ____, 2017

Foreperson