

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
FEB 20 2008
[Signature]
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

-VS-

MICHELE ESTRADA,

Defendant.

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CR 07-10038

JURY INSTRUCTIONS

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 verdicts 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 denials made by the defendant in her pleas 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 just verdicts, regardless of the consequences to any party.

INSTRUCTION NO. 3

The indictment in this case charges that the defendant committed the crimes of bank fraud; uttering, passing, or possessing counterfeit securities; and money laundering. The defendant has pleaded not guilty to these charges.

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 crimes charged.

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

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

INSTRUCTION NO. 4

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. 5

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 such instructions.

INSTRUCTION NO. 4

There are two types of evidence from which you may find the truth as to the facts of a case--direct evidence 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 evidence 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 heard evidence that the defendant has previously been convicted of passing bad checks and giving false information to police. 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 whether such conduct shows the defendant's intent in this case to commit fraud, whether her conduct in this case was done or not done under some kind of mistake, or whether her conduct in this case was or was not an accident. 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 she committed such an act in this case. You may not convict a person simply because you believe she 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 intent, mistake, or accident.

INSTRUCTION NO. 10

The crime of bank fraud, as charged in Count One of the indictment, has three essential elements, which are:

1. From on or about between August 1, 2006, and October 1, 2006, in the District of South Dakota, the defendant knowingly participated in a scheme to defraud a financial institution to obtain money under the custody and control of Wells Fargo Bank, N.A. by means of material false or fraudulent representations, in that she did knowingly deposit a counterfeit United States Treasury check into her account and then spent or withdrew most of the funds deposited.
2. The defendant did so with intent to defraud; and
3. Wells Fargo Financial Bank, N.A. was insured by the Federal Deposit Insurance Corporation.

The phrase “scheme to defraud” includes any plan or course of action intended to deceive or cheat another out of money by employing material falsehoods or concealing material facts. It also means the obtaining of money from a financial institution by means of material false representations or promises.

A representation or pretense is “false” when it is untrue when made or effectively conceals or omits a material fact. A representation or pretense is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of the institution in deciding whether to engage or not to engage in a particular transaction. However, whether a representation or pretense is “material” does not depend on whether the institution was actually deceived.

For you to find the defendant guilty of this crime as charged in Count One 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. 11

The crime of passing a counterfeit obligation, as charged in Count Two of the indictment, has three essential elements, which are:

1. From on or about between August 1, 2006, and October 1, 2006, in the District of South Dakota, the defendant passed a counterfeit United States Treasury check.
2. The defendant knew that the check was counterfeit when she passed it; and
3. The defendant did so with intent to defraud.

To act with "intent to defraud" means to act with the intent to deceive or cheat, for the purpose of causing some financial loss to another or bringing about some financial gain to the defendant or another. It is not necessary, however, to prove that the United States or anyone else was in fact defrauded.

For you to find the defendant guilty of this crime as charged in Count Two 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 crime of bank fraud, as charged in Count Three of the indictment, has three essential elements, which are:

1. From on or about between October 1, 2006, and December 1, 2006, in the District of South Dakota, the defendant knowingly executed a scheme to defraud a financial institution to obtain money owned by Great Western Bank by means of material false or fraudulent representations, in that she did knowingly deposit counterfeit personal money orders into her account and then spent or withdrew most of the funds deposited.
2. The defendant did so with intent to defraud; and
3. Great Western Bank was insured by the Federal Deposit Insurance Corporation.

The phrase "scheme to defraud" includes any plan or course of action intended to deceive or cheat another out of money by employing material falsehoods or concealing material facts. It also means the obtaining of money from a financial institution by means of material false representations or promises.

A representation or pretense is "false" when it is untrue when made or effectively conceals or omits a material fact. A representation or pretense is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of the institution in deciding whether to engage or not to engage in a particular transaction. However, whether a representation or pretense is "material" does not depend on whether the institution was actually deceived.

For you to find the defendant guilty of this crime as charged in Count Three 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. 13

The crime of passing counterfeit securities as charged in Count Four of the indictment, has four essential elements, which are:

1. From on or about between October 1, 2006, and December 1, 2006, in the District of South Dakota, defendant knowingly made, uttered, or possessed one or more counterfeit personal money orders purportedly issued by U.S. Bank.
2. The defendant knew that one or more of the personal money orders was counterfeit when she passed them.
3. Defendant did so with the intent to defraud, and
4. U.S. Bank is an organization which operates in or its activities affect interstate commerce.

For you to find the defendant guilty of this crime charged in Count Four 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. 14

The crime of illegally transferring funds, as charged in Count Five of the indictment has three essential elements which are:

1. From on or about between October 1, 2006, and December 1, 2006, in the District of South Dakota, the defendant knowingly transmitted funds.
2. The defendant did so with intent to promote the carrying on of bank fraud as charged in Count Three or passing counterfeit securities as charged in Count Four; and
3. The transfer or transfers were from a place in the United States to or through a place outside the United States, namely to Nigeria.

This alleged crime is commonly referred to as "money laundering."

For you to find the defendant guilty of this crime charged in Count Five 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. 15

A person may also be found guilty of the crimes charged in the indictment even if she personally did not do every act constituting the crimes charged, if she aided and abetted the commission of the crimes. 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 or aiding the commission of the offense; and
3. have intended to commit the crime in question as explained in Instructions 10, 11, 12, 13, or 14.

For you to find the defendant guilty of any of the crimes charged in the indictment by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the elements of the crime in question 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.

You are also instructed that a person cannot aid and abet herself in the commission of the crime. In other words, you may only find the defendant guilty of aiding and abetting a crime if you first find that some other person has performed acts necessary for the commission of one of the offenses charged.

INSTRUCTION NO. 16

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 intent of the defendant.

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. 17

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 the United States Treasury check was counterfeit or the personal money orders were counterfeit and that she deliberately avoided learning the truth. The element of knowledge may be inferred if the defendant deliberately closed her eyes to what would otherwise have been obvious to her. You may not find the defendant acted “knowingly” if you find she was merely negligent, careless or mistaken as to whether the instrument or instruments were counterfeit.

You may not find that the defendant acted knowingly if you find that the defendant actually believed that the instruments were valid and not counterfeit.

INSTRUCTION NO. 18

One of the issues in this case is whether the defendant acted in good faith. Good faith is a complete defense to the offenses charged if it is inconsistent with the intent to defraud or deceive another, which is an element of all of the charges pending before you.

Intent to defraud is not presumed or assumed; it is personal and not imputed. One is chargeable with his own personal intent, not the intent of some other person. Bad faith is an essential element of intent to defraud. Good faith constitutes a complete defense to one charged with an offense of which intent to defraud is an essential element. One who acts with honest intentions is not chargeable with intent to defraud. Evidence which establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish intent to defraud. In order to establish intent to defraud on the part of a person, it must be established that such person knowingly and intentionally attempted to deceive another. One who knowingly and intentionally deceives another is chargeable with intent to defraud notwithstanding the manner and form in which the deception was attempted.

Evidence that the defendant acted in good faith may be considered by you together with all of the other evidence in determining whether or not she acted with the intent to defraud or deceive another.

INSTRUCTION NO. 19

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

INSTRUCTION NO. 20

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 verdicts, you will have your foreperson fill in, date and sign the form to state the verdicts upon which you unanimously agree, and then return with your verdicts to the courtroom.

INSTRUCTION NO. 21

The verdicts must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdicts 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. 22

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 the marshal and 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 unanimous verdicts.

INSTRUCTION NO. 23

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—has been said or done to suggest to you what I think your verdicts should be.

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

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-VS-

MICHELE ESTRADA,

Defendant.

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CR 07-10038

VERDICT

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

COUNT 1

We, the jury in the above entitled action, as to the crime of bank fraud, as charged in Count 1 of the indictment, find Michele Estrada:

_____ NOT GUILTY _____ GUILTY

COUNT 2

We, the jury in the above entitled action, as to the crime of passing a counterfeit United States Treasury check, as charged in Count 2 of the indictment, find Michele Estrada:

_____ NOT GUILTY _____ GUILTY

COUNT 3

We, the jury in the above entitled action, as to the crime of bank fraud, as charged in Count 3 of the indictment, find Michele Estrada:

_____ NOT GUILTY _____ GUILTY

COUNT 4

We, the jury in the above entitled action, as to the crime of passing counterfeit personal money orders, as charged in Count 4 of the indictment, find Michele Estrada:

_____ NOT GUILTY _____ GUILTY

COUNT 5

We, the jury in the above entitled action, as to the crime of money laundering, as charged in Count 5 of the indictment, find Michele Estrada:

_____ NOT GUILTY _____ GUILTY

Dated this _____ day of February, 2008.

Foreperson