

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
AUG 25 2010
[Signature]
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

JOSEPH PAUL YOUNG,

Defendant.

*
*
*
*
*
*
*
*
*
*

CR. 08-40151-RAL

FINAL INSTRUCTIONS
TO JURY

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.

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.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, 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 -- this 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.

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 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.

INSTRUCTION NO. 5

The value of identification testimony depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later.

In evaluating such testimony you should consider all of the factors mentioned in these instructions concerning your assessment of the credibility of any witness, and you should also consider, in particular, whether the witness had an adequate opportunity to observe the person in question at the time of the offense. You may consider, in that regard, such matters as the length of time the witness had to observe the person in question, the prevailing conditions at that time in terms of visibility or distance and the like, and whether the witness had known or observed the person at earlier times.

You should also consider whether the identification made by the witness after the offense was the product of his or her own recollection. You may consider, in that regard, the strength of the identification, and the circumstances under which the identification was made, and the length of time that elapsed between the occurrence of the crime and the next opportunity the witness had to see the defendant.

If the identification by the witness may have been influenced by the circumstances under which the defendant was presented to the witness for identification, you should scrutinize the identification with great care.

The Government has the burden of proving identity beyond a reasonable doubt. It is not essential that the witness be free from doubt as to the correctness of the identification. However, you, the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may find him guilty. If you are not convinced beyond a reasonable doubt that the defendant was the person who committed the crime, you must find the defendant not guilty.

INSTRUCTION NO. 6

You have heard testimony from Dr. Roy Malpass, a person described as an expert. Persons who, by knowledge, skill, training, education, or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NO. 7

The indictment in this case charges that the Defendant committed the crime of bank robbery on three separate occasions. The defendant has pleaded not guilty to all three of 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. Thus the defendant, even though charged, begins the trial with no evidence against him. The 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 element of the crime charged.

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

There is no burden upon a defendant to prove that he is innocent. Accordingly, the fact that defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 8

The crime of Bank Robbery, as charged in Count 1 of the indictment, has three elements, which are:

***One*, that on or about the 13th day of August, 2007, at Sioux Falls, in the District of South Dakota, Joseph Paul Young, took money from the person of Melissa Schipper, while that money was in the care or custody of Valley Bank;**

***Two*, such taking or attempted taking was by force and violence, or by intimidation;**
and

***Three*, the deposits of Valley Bank in Sioux Falls, South Dakota, were then insured by the Federal Deposit Insurance Corporation (FDIC).**

If all of these elements have been proved beyond a reasonable doubt as to the defendant, Mr. Young, then you must find the defendant guilty of the crime charged in Count 1; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 9

The crime of Bank Robbery, as charged in Count 2 of the indictment, has three elements, which are:

***One*, that on or about the 14th day of August, 2007, at Mitchell, in the District of South Dakota, Joseph Paul Young, took money from the person of Kristine Schmitz and/or Hillary Vining, while that money was in the care or custody of Wells Fargo Bank;**

***Two*, such taking or attempted taking was by force and violence, or by intimidation;**
and

***Three*, the deposits of Wells Fargo Bank in Mitchell, South Dakota, were then insured by the Federal Deposit Insurance Corporation (FDIC).**

If all of these elements have been proved beyond a reasonable doubt as to the defendant, Mr. Young, then you must find the defendant guilty of the crime charged in Count 2; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 10

The crime of Bank Robbery, as charged in Count 3 of the indictment, has three elements, which are:

One, that on or about the 26th day of September, 2007, at Sioux Falls, in the District of South Dakota, Joseph Paul Young, took money from the person of Robin Hurley, while that money was in the care or custody of First National Bank;

Two, such taking or attempted taking was by force and violence, or by intimidation;
and

Three, the deposits of First National Bank in Sioux Falls, South Dakota, were then insured by the Federal Deposit Insurance Corporation (FDIC).

If all of these elements have been proved beyond a reasonable doubt as to the defendant, Mr. Young, then you must find the defendant guilty of the crime charged in Count 3; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 11

To take something “by intimidation” means to take it by saying or doing something that would make an ordinary person fear bodily harm

To prove that a taking was “by intimidation,” the government is not required to prove that anyone was actually intimidated or afraid. The government is also not required to prove that the defendant intended to intimidate anyone. Rather, the government must simply prove, beyond a reasonable doubt, that the defendant intended to do or say what he in fact did or said, and that the defendant’s words or actions were of a kind that would make an ordinary person fear bodily harm.

INSTRUCTION NO. 12

You have heard evidence that the defendant previously committed acts in West Virginia similar to those charged in this case. You may use this evidence to help you decide identity, meaning whether the similarity between the acts previously committed and the ones charged in this case suggest that the same person committed all of them.

You also heard evidence regarding two bank robberies committed in Minnesota in September of 2007. The defendant has not been convicted of these robberies. This evidence is admitted for the limited purpose to help you decide identity, meaning whether the defendant on trial here committed any of the South Dakota bank robberies charged in this case.

To use the evidence from the Minnesota robberies on identity, you must find by the greater weight of the evidence that the defendant committed one or both of the Minnesota robberies. If you do not so find by the greater weight of the evidence, then you must disregard such evidence in its entirety. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. This is a lower standard than proof beyond a reasonable doubt. Of course, for defendant to be found guilty of any of the offenses charged, you must find that the evidence proves each element of the offense charged beyond a reasonable doubt.

The defendant is on trial for the crimes charged and for those crimes alone, and not for the Minnesota or West Virginia bank robberies. You may not convict the defendant simply because you believe he committed some other bad act.

INSTRUCTION NO. 13

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. 14

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 bailiff, 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 telephone, cell phone, smart phone, iPhone, Blackberry 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, My Space, LinkedIn, 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. The verdict whether guilty or not 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.

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 bailiff that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

CR 08-40151-RAL

VERDICT FORM

-vs-

JOSEPH PAUL YOUNG,
Defendant.

We, the jury, duly empaneled and sworn to try the issues in this case find as follows:

1. We find Joseph Paul Young, _____ (fill in either "guilty" or "not guilty") of Bank Robbery as charged in Count 1 of the indictment.
2. We find Joseph Paul Young, _____ (fill in either "guilty" or "not guilty") of Bank Robbery as charged in Count 2 of the indictment.
3. We find Joseph Paul Young, _____ (fill in either "guilty" or "not guilty") of Bank Robbery as charged in Count 3 of the indictment.

Dated August ___, 2010

Foreperson