

**FILED**

Nov 30 2017

  
CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

KAITLYN ERICKSON,

Defendant.

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3:17-CR-30043-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 the defendant in the same manner as you judge the testimony of any other witness. 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 the defendant with two different crimes. Count I charges the defendant with bank fraud. Count II charges the defendant with forgery. The defendant has pleaded not guilty to each of those charges.

The indictment is simply the document that formally charges the defendant with the crimes for which he is on trial. The indictment is not evidence of anything. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate, with no evidence against her. The presumption of innocence alone is sufficient to find the 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 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 she is innocent. Instead, the burden of proof remains on the government throughout the trial.

INSTRUCTION NO. 6

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

***One, that on or about the 17th day of January, 2017, in Todd County, in the District of South Dakota, the defendant, Kaitlyn Erickson, knowingly executed or attempted to execute a scheme to defraud one or more financial institutions, namely Wells Fargo Bank, to obtain moneys, funds, credits, assets, securities, or other property owned by or under the custody and control of the aforementioned financial institution by means of material false or fraudulent pretenses, representations or promises;***

***Two, that the defendant did so with the intent to defraud; and***

***Three, that Wells Fargo 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, property, or property rights by employing material falsehoods or concealing or omitting material facts. It also means the obtaining of money or property from a financial institution by means of material false pretenses, representations, or promises.

A fact, falsehood, pretense, representation, or promise is “false” when it is untrue when made or effectively conceals or omits a material fact. A fact, falsehood, pretense, representation, or promise 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 fact, falsehood, pretense, representation, or promise is “material” does not depend on whether the institution was actually deceived.

To act with “intent to defraud” for purposes of Count I means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property or property rights to another or bringing some financial gain to oneself or another to the detriment of a third party. With respect to false statements, the defendant must have known the statement was untrue when made or have made the statement with reckless indifference to its truth or falsity.

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

INSTRUCTION NO. 7

The crime of forgery, as charged in Count II of the indictment, has five elements, which are:

***One*, that on or about the 17th day of January, 2017, in Todd County, in the District of South Dakota, the defendant, Kaitlyn Erickson, falsely passed a written instrument, namely check #2188, from Account Number \_\_\_\_\_ at \_\_\_\_\_, in the name of William F. Cumbow and Vicky L. Cumbow;**

***Two*, that at the time the check was passed, the defendant knew that the signature on the signature line of the check was unauthorized;**

***Three*, that the defendant did so with the intent to defraud;**

***Four*, that the defendant is an Indian;**

***Five*, that the offense was committed in Indian country.**

To act with “intent to defraud” for purposes of Count II means to act willfully and with the specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to one’s self.

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

INSTRUCTION NO. 8

A "written instrument" as used in Instruction No. 7 is any paper, document, or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying, or recording information, and any money, credit card, token, stamp, seal, badge, trade mark, service mark or any evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

INSTRUCTION NO. 9

In the crime of bank fraud as charged in Count I of the indictment, and the crime of forgery as charged in Count II of the indictment, there must exist in the mind of the perpetrator the specific intent to defraud. If specific intent did not exist, these crimes have not been committed.

INSTRUCTION NO. 10

One of the issues in this case is whether the defendant acted with the specific intent to defraud or rather acted in good faith.

Intent to defraud is not presumed or assumed; it is personal and not imputed. One is chargeable with her 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 judgement 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. 11

In this case, the defendant cannot be convicted simply because she was associated with or friendly with anyone who may have acted in violation of the law. Each element of the offense must be proved independently against the defendant individually on the basis of her own conduct and state of mind.

Only the defendant is on trial here, and the defendant is on trial only for the crimes charged. You should not concern yourself with whether others who may have acted criminally have been investigated, charged or convicted.

INSTRUCTION NO. 12

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 her 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. 13

Count II of the indictment in this case alleges that the defendant is an Indian and that the alleged offense occurred in Indian country. The existence of those two factors is necessary in order for this Court to have jurisdiction over that crime charged in the indictment.

Counsel for the Government, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that the place where the alleged incident is claimed to have occurred is in Indian country.

The defendant has not, by entering this agreement or stipulation, admitted her guilt of the offense charged, and you may not draw any inference of guilt from the stipulation. The only effect of this stipulation is to establish the facts that the defendant is an Indian and that the place where the alleged offense is claimed to have occurred is in Indian country.

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 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, 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.

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,  Plaintiff,  vs.  KAITLYN ERICKSON,  Defendant.</p>	<p>3:17-CR-30043-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 Kaitlyn Erickson, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of bank fraud as charged in Count I of the indictment.
2. We find the defendant Kaitlyn Erickson, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of forgery as charged in Count II of the indictment.

Dated November \_\_\_\_, 2017

\_\_\_\_\_  
Foreperson