

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY BERTINO and
MARSHALL FIELD,

Defendants

CR 19-10019-CBK

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 defendants in their 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 the defendants with the crimes of bribery concerning programs receiving federal funds. The defendants have 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 defendants are presumed to be innocent. Therefore, the defendants, even though charged, begin the trial with no evidence against them. This presumption of innocence alone is sufficient to find the defendants 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 any defendant to prove that he is innocent. Accordingly, the fact that any defendant did not testify or call other witnesses must not be considered by you in any way, or even discussed, in arriving at your verdicts.

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.

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, and the documents and other things received as exhibits.

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.

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 in question beyond a reasonable doubt, you must find that 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 a 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 testimony from a person described as an expert. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state opinions on matters in that field and may also state the reasons for those 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. 10

The crime of bribery of an agent of a program receiving federal funds, as charged in Count 1 of the indictment, as to Anthony Bertino, has four essential elements, which are:

1. Anthony Bertino was an agent of the Dakota Nation Gaming Enterprise, an agency of the Sisseton-Wahpeton Oyate Tribe.
2. Between on or about May 7, 2014, and August 4, 2014, in the District of South Dakota, Anthony Bertino corruptly solicited or demanded for his benefit, or accepted or agreed to accept from any person, something of value, that is money, to cause the Dakota Nation Gaming Enterprise purchase of personal property.
3. The purchase of the personal property involved something of a value of \$5,000 or more.
4. The Sisseton-Wahpeton Oyate Tribe is a tribal government that received federal benefits in excess of \$10,000 in the one-year period beginning October 1, 2013.

As used in this instruction, the term “agent” means a person authorized to act on behalf of Dakota Nation Gaming Enterprise as an employee or otherwise.

As used in this instruction, the term “corruptly” means that the defendant acted voluntarily and intentionally and, at least in part, in return for being influenced, induced, or rewarded in connection with the Dakota Nation Gaming Enterprise purchase of certain personal property.

For you to find defendant Anthony Bertino guilty of this crime charged in Count 1 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find defendant Anthony Bertino not guilty of this crime.

INSTRUCTION NO. 11

The crime of bribery of an agent of a program receiving federal funds, as charged in Count 2 of the indictment, as to Marshall Field, has four essential elements, which are:

1. Anthony Bertino was an agent of the Dakota Nation Gaming Enterprise, an agency of the Sisseton-Wahpeton Oyate Tribe.
2. Between on or about May 7, 2014, and August 4, 2014, in the District of South Dakota, Marshall Field corruptly gave, offered, or agreed to give a thing of value, that is money, to Anthony Bertino to assist in efforts to convince Dakota Nation Gaming Enterprise to purchase certain personal property.
3. The purchase of the personal property involved something of a value of \$5,000 or more.
4. The Sisseton-Wahpeton Oyate Tribe is a tribal government that received federal benefits in excess of \$10,000 in the one-year period beginning October 1, 2013.

As used in this instruction, the term “agent” means a person authorized to act on behalf of Dakota Nation Gaming Enterprise as an employee or otherwise.

As used in this instruction, the term “corruptly” means that the defendant acted voluntarily and intentionally and, at least in part, to influence, induce, or reward Anthony Bertino for his efforts to convince the Dakota Nation Gaming Enterprise to purchase certain personal property.

For you to find defendant Marshall Field guilty of this crime charged in Count 2 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find defendant Marshall Field not guilty of this crime.

INSTRUCTION NO. 12

The criminal statute does not apply to bona fide salary, wages, fees, or other compensation paid in the usual course of business unless the compensation was knowingly paid corruptly or knowingly received corruptly by an employee of the Tribe or both.

INSTRUCTION NO. 13

Intent may be proved like anything else. You may consider any statements and acts done by the defendants, and all the facts and circumstances in evidence which may aid in a determination of a 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. 114

The indictment charges that offenses were committed “between on or about” 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 in question were committed on dates reasonably near the dates alleged.

INSTRUCTION NO. 15

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 notify the marshal that you have a verdict.

INSTRUCTION NO. 16

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 the 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. 17

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 unanimous verdicts.

INSTRUCTION NO. 18

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
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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 as charged in Count 1 of the indictment, find Anthony Bertino:

_____ NOT GUILTY _____ GUILTY

COUNT 2

We, the jury in the above entitled action, as to the crime as charged in Count 2 of the indictment, find Marshall Field:

_____ NOT GUILTY _____ GUILTY

Dated this _____ day of October, 2020.

Foreperson

FILED

APR 02 2019

Matthew Thibault
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY BERTINO and
MARSHALL FIELD,

Defendants.

CR 19-

10019

REDACTED INDICTMENT

Bribery Concerning Programs Receiving
Federal Funds

18 U.S.C. §§ 666(a)(1)(B) and 666(a)(2)

The Grand Jury charges:

At all times material to this Indictment and to each count alleged herein:

1. The Dakota Nation Gaming Enterprise was an agency of the Sisseton-Wahpeton Oyate Tribe, a tribal government that received federal assistance in excess of \$10,000 during the one-year period between October 1, 2013, and September 30, 2014.

2. Defendant Anthony Bertino was an agent and the Corporate Marketing Officer of the Dakota Nation Gaming Enterprise.

COUNT 1

Between on or about May 7, 2014, and August 4, 2014, in the District of South Dakota, the Defendant, Anthony Bertino, being an agent of the Dakota Nation Gaming Enterprise, did corruptly solicit and demand for the benefit of any person, and accepted or agreed to accept, anything of value from any person, intending to be influenced and rewarded in connection with a transaction and

series of transactions of the Dakota Nation Gaming Enterprise involving \$5,000 or more, all in violation of 18 U.S.C. § 666(a)(1)(B).

COUNT 2

Between on or about May 7, 2014, and August 4, 2014, in the District of South Dakota, the Defendant, Marshall Field, did corruptly give, offer, and agree to give a thing of value to any person intending to influence and reward Anthony Bertino, an agent of the Dakota Nation Gaming Enterprise, in connection with a transaction and series of transactions of the Dakota Nation Gaming Enterprise involving \$5,000 or more, all in violation of 18 U.S.C. § 666(a)(2).

A TRUE BILL:

"REDACTED"

Foreperson

RONALD A. PARSONS, JR.
United States Attorney

By  _____