

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH G. LAIN, JR.,

Defendant.

CRIMINAL ACTION

No. 10-20029-CM

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Members of the Jury: Now that you have heard the evidence and you are about to hear the argument, the time has come to instruct you as to the law governing the case.

Although you, as jurors, are the sole judges of the facts, you are duty bound to follow the law as stated in the instructions of the court and to apply the law so given to the facts as you find them from the evidence before you.

You are not to single out one instruction alone as stating the law, but are to consider the instructions as a whole. You must also follow all of the oral instructions I gave you during the trial.

Neither are you to be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the court.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action, or remark that I have made during the course of this trial have I intended to interpose any opinion or suggestion as to how I would resolve any of the issues of this case.

INSTRUCTION NO. 3

At times during the trial the court passes upon objections to the admission of certain things into evidence. Questions relating to the admissibility of evidence are solely questions of law for the court and you must not concern yourselves with the reasons for its rulings. In your consideration of the case, you must draw no inferences from these rulings and you must consider only the evidence which is admitted by the court.

INSTRUCTION NO. 4

Statements and arguments of counsel are not evidence in the case unless made as admissions or stipulations of facts. When the attorneys for all parties stipulate or agree as to the existence of a fact, the jury must accept the stipulation as evidence and as having been properly presented to you.

The evidence in the case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, and all facts which have been admitted or stipulated. Any evidence as to which an objection was sustained by the court, and any evidence ordered stricken by the court, must be entirely disregarded.

You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited only to the statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in the light of your experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly reach a verdict. One is direct evidence -- such as the testimony of an eyewitness. The other is circumstantial evidence -- the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but requires that, before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

INSTRUCTION NO. 6

In weighing the testimony of the witnesses, you have a right to consider their appearance and manner while testifying, their means of knowledge, apparent intelligence or ignorance, interest or want of interest in the outcome of the case, and all other facts and circumstances appearing in the trial which will aid you in arriving at the truth. If you believe that any witness has willfully testified falsely as to any material fact, you may disregard the whole or any part of his testimony; but you are not bound to believe or disbelieve all the testimony of any witness.

When weighing conflicting testimony you should consider whether the discrepancy has to do with a material fact or with an unimportant detail, and should keep in mind that innocent misrecollection -- like failure of recollection -- is not uncommon.

INSTRUCTION NO. 7

In considering the evidence in this case, you are expected to use your good sense; consider the evidence for only those purposes for which it has been admitted, and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

You are to perform your duty without bias as to any party or person. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything but the evidence in the case.

INSTRUCTION NO. 8

The defendant in this case has not offered himself as a witness and has not testified from the witness stand. You must not draw any inference of guilt from the fact that the defendant did not testify, and you must not consider this fact in arriving at your verdict.

INSTRUCTION NO. 9

The government has the burden of proving the defendant's guilt beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the government's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of a defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that a defendant is guilty of a crime charged, you must find that defendant guilty of that crime. If on the other hand, you think there is a real possibility that a defendant is not guilty of a crime charged, you must give the defendant the benefit of the doubt, and find that defendant not guilty of that crime. If you view the evidence as reasonably permitting either of two conclusions--one of innocence, the other of guilt--you must, of course, adopt the conclusion of innocence.

INSTRUCTION NO. 10

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. It is rarely possible to prove anything to an absolute certainty, but at the same time a defendant is not to be convicted on mere suspicion or conjecture. You are instructed that a reasonable doubt is a doubt that would make a reasonable person hesitate to act in the graver and more important transactions of life.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is always upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution. The law does not impose upon a defendant the burden or duty of producing any evidence.

INSTRUCTION NO. 11

The indictment charges that, from on or about July 1, 2009, to on or about October 1, 2009, in the District of Kansas, the defendant, Kenneth G. Lain, Jr., wilfully transferred, gave, transported, or delivered a firearm from Missouri to Kansas, where neither he nor the Kansas recipient were federally licensed firearms dealers, in violation of Title 18, United States Code, Sections 922(a)(5) and 924(a)(1)(D).

An indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against a defendant and does not create any presumption or permit any inference of guilt. It is a mere charge or accusation -- nothing more and nothing less.

INSTRUCTION NO. 12

The indictment charges that the offense was committed “on or about” a certain date. It is not necessary that the proof establish with certainty the exact date of the alleged offense. It is sufficient if the evidence shows beyond a reasonable doubt that the offense was committed on a date reasonably near the date charged.

INSTRUCTION NO. 13

To the charge contained in the indictment, the defendant has entered a plea of “not guilty.” The plea puts in issue every material ingredient of the crime charged and makes it incumbent upon the United States to establish by the evidence, to your satisfaction beyond a reasonable doubt, as that term is herein defined, every material allegation of the offense charged as to the defendant.

INSTRUCTION NO. 14

An indictment is simply an accusation. It is not evidence of anything. The law presumes a defendant to be innocent of crime. This presumption remains with him or her throughout the trial. Thus, a defendant, although accused, begins the trial with a “clean slate,” with no evidence against him or her. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied of the defendant’s guilt beyond a reasonable doubt, from all the evidence in the case.

INSTRUCTION NO. 15

The defendant is charged in one count with a violation of sections 922(a)(5) and 924(a)(1)(D), Title 18 of the United States Code.

This law makes it a crime to willfully transfer, sell, trade, give, transport, or deliver any firearm to any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who the transferor knows or has reasonable cause to believe does not reside in the State in which the transferor resides.

To find the defendant guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: the defendant resided in the State of Missouri on or about the date he gave or transferred the .38 caliber revolver to Carroll Hill;

Second: Carroll Hill received and took possession of the .38 caliber revolver with the intent to keep it;

Third: Carroll Hill resided in the State of Kansas on or about the date of transfer or receipt of the .38 revolver, and was not a federally licensed firearms dealer, manufacturer, or collector;

Fourth: that defendant did so willfully, that is, that the defendant transferred or gave the .38 caliber revolver to Carroll Hill with knowledge that his conduct was unlawful; and

Fifth: that this act occurred from on or about the 1st day of July, 2009, to on or about the 1st day of October, 2009, in the District of Kansas.

The term “firearm” means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive.

INSTRUCTION NO. 16

To establish that defendant acted willfully, the government must prove beyond a reasonable doubt that the defendant acted with knowledge that his conduct was unlawful, but not that the defendant knew the precise legal duty which he was charged with violating.

INSTRUCTION NO. 17

The government has the burden of proving beyond a reasonable doubt every essential element of the crime charged. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

INSTRUCTION NO. 18

The defendant is on trial only for the acts alleged in the indictment. He is not on trial for any other acts or conduct. In determining whether the defendant is guilty or innocent, you are therefore to consider only whether the defendant has or has not committed the acts charged in the indictment. Even if you are of the opinion that the defendant is guilty of some offense not charged in the indictment, you must find him not guilty if the evidence does not show beyond a reasonable doubt that he has committed the specific acts charged in the indictment.

INSTRUCTION NO. 19

The punishment provided by law for the offenses charged is a matter exclusively within the province of the court and may not be considered by the jury in any way in arriving at a verdict as to the guilt or innocence of any defendant.

THE FINAL INSTRUCTIONS GIVEN FOLLOWING CLOSING ARGUMENTS

INSTRUCTION NO. 20

This is an important case. If you should fail to reach a decision, the case is left open and undecided. Like all cases, it must be decided sometime. There is no reason to believe that the case can be tried again any better or more exhaustively than it has been. There is no reason to believe that more evidence or clearer evidence would be produced on behalf of either side.

Also there is no reason to believe that the case would ever be submitted to people more intelligent or more impartial or more reasonable than you. Any future jury must be selected in the same manner that you were.

This does not mean that those favoring any particular position should surrender their honest convictions as to the weight or effect of any evidence solely because of the opinion of other jurors or because of the importance of arriving at a decision.

This does mean that you should give respectful consideration to each other's views and talk over any differences of opinion in a spirit of fairness and candor. If at all possible, you should resolve any differences and come to a common conclusion so that this case may be completed.

INSTRUCTION NO. 21

When you retire to the jury room, you will first select one of your members to preside over your deliberations, speak for the jury in court and sign the verdict upon which you agree.

In this case your verdict will be returned in the form of one answer to one question submitted by the court. Your answer will constitute your verdict. Your answer to the question must be unanimous. Your verdict must be founded entirely upon the evidence admitted and the law as given in these instructions.

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 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. Remember at all times that you are not partisans. You are judges — judges of the facts.

INSTRUCTION NO. 22


If it becomes necessary during your deliberations to communicate with the court, you may send a note by a bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the court by any means other than a signed writing, and the court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

You will note from the oath taken by the bailiffs that they too, 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 how the jury stands — numerically or otherwise — on the question before you, until after you have reached a unanimous verdict.

You may now retire and conduct your deliberations in such manner as may be determined by your good judgment as reasonable people.

May 12 2010
Date



Carlos Murguia
United States District Judge