

FILED
US DISTRICT COURT
DISTRICT OF NEBRASKA
APR - 8 2005
OFFICE OF THE CLERK

8:04CR167

FINAL JURY INSTRUCTIONS

VS.

Defendant.

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. This is true even though some of those I gave you at the beginning and during trial are not repeated here.

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

You are reminded that you are not to engage in any independent investigation of this case. For instance, you are not to consult a dictionary or any other like reference.

INSTRUCTION NO. 4

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 give any opinion or suggestion as to what your verdict should be.

During this trial I may have occasionally asked questions of witnesses in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions related.

INSTRUCTION NO. 4A

You have heard evidence that Mr. Gatherright has an arrangement with the Government under which he gets paid for providing information to the Government. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his information or testimony may have been influenced by such payments is for you to determine.

INSTRUCTION NO. 4 B R 6 K

You have heard evidence that Mr. Simpson, a witness cooperating with the government, hopes to receive a reduced sentence on criminal charges pending against him in return for his cooperation with the Government in this case. If the prosecutor handling this witness's case believes he provided substantial assistance, that prosecutor can file in the court in which the charges are pending against this witness a motion to reduce his sentence. The judge has no power to reduce a sentence for substantial assistance unless the Government, acting through the United States Attorney, files a such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the Government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

You may give the testimony of this witness such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by his hope of receiving a reduced sentence is for you to decide.

INSTRUCTION NO. 4C

You have heard testimony about the character and reputation of one or more witnesses cooperating with the government for truthfulness. You may consider this evidence only in deciding whether to believe the testimony of such witnesses and how much weight to give to that testimony.

INSTRUCTION NO. 5

The indictment in this case charges the defendant with two different crimes.

Under Count I, the indictment charges that the defendant committed the crime of conspiracy to conduct an illegal gambling business.

Under Count II, the indictment charges that the defendant committed the crime of conducting an illegal gambling business.

The defendant has pleaded not guilty to each 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 essential element of the crime charged.

There is no burden upon a defendant to prove that he or 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. 6

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. 7

The crime of conspiracy as charged in Count I of the indictment has four essential elements, which are:

One: Beginning on or about September 11, 2002, and continuing to on or about February 1, 2004, in the District of Nebraska, two or more persons reached an agreement or came to an understanding to conduct an illegal gambling business;

Two: The defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

Three: At the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding; and

Four: While the agreement or understanding was in effect, a person or persons who had joined in the agreement or understanding knowingly did one or more of the following acts for the purpose of carrying out or carrying forward the agreement or understanding:

- a. On or about September 11, 2002, Stephen Linebarger took bets at 2402 Ames Avenue, Omaha, Nebraska.
- b. On or about October 14, 2002, Stephen Linebarger took bets at 2402 Ames Avenue, Omaha, Nebraska.
- c. On or about October 26, 2002, Richard Tibbs a/k/a "Fred" took bets at 2402 Ames Avenue, Omaha, Nebraska.

d. On or about November 15, 2002, James Goodwin took bets and counted money at 2402 Ames Avenue, Omaha, Nebraska.

e. On or about November 27, 2002, Richard Tibbs a/k/a "Fred" took bets at 2402 Ames Avenue, Omaha, Nebraska.

f. On or about November 29, 2002, James Goodwin received money and gambling records from Stephen Linebarger at 2402 Ames Avenue, Omaha, Nebraska.

g. On or about November 29, 2002, Philip Moore a/k/a "Swirl" took bets at 2402 Ames Avenue, Omaha, Nebraska.

h. On or about November 28, 2002, Richard Tibbs a/k/a "Fred" took bets at 2402 Ames Avenue, Omaha, Nebraska.

i. On or about December 4, 2002, Richard Tibbs a/k/a "Fred" took bets at 2402 Ames Avenue, Omaha, Nebraska.

j. On or about December 22, 2002, Stephen Linebarger took bets at 2402 Ames Avenue, Omaha, Nebraska.

k. On or about December 22, 2002, Richard Tibbs a/k/a "Fred" took bets at 2402 Ames Avenue, Omaha, Nebraska.

l. On or about May 23, 2003, the defendant James Anderson stored gambling proceeds at his residence at 2431 Himebaugh, Omaha, Nebraska.

m. On or about June 15, 2003, Stephen Linebarger took bets at 2402 Ames Avenue, Omaha, Nebraska.

n. On or about October 10, 2003, the defendant James Anderson possessed gambling records and five thousand one hundred dollars (\$5,100) in gambling proceeds.

o. On or about November 24, 2003, the defendant James Anderson took bets and counted out large sums of money at 2402 Ames Avenue, Omaha, Nebraska.

p. On or about November 24, 2003, Philip Moore a/k/a "Swirl" took bets at 2402 Ames Avenue, Omaha, Nebraska.

q. On or about November 25, 2003, the defendant James Anderson took bets and paid winnings at 2402 Ames Avenue, Omaha, Nebraska.

r. On or about November 25, 2003, James Goodwin took bets and paid winnings at 2402 Ames Avenue, Omaha, Nebraska.

s. On or about November 25, 2003, Philip Moore a/k/a "Swirl" took bets at 2402 Ames Avenue, Omaha, Nebraska.

t. On or about November 26, 2003, Philip Moore a/k/a "Swirl" took bets at 2402 Ames Avenue, Omaha, Nebraska.

u. On or about November 26, 2003, James Goodwin took bets and handled money at 2402 Ames Avenue, Omaha, Nebraska.

v. On or about December 1, 2003, Stephen Linebarger took bets at 2402 Ames Avenue, Omaha, Nebraska.

w. On or about December 1, 2003, James Goodwin took bets at 2402 Ames Avenue, Omaha, Nebraska.

x. On or about December 1, 2003, Philip Moore a/k/a "Swirl" took bets at 2402 Ames Avenue, Omaha, Nebraska.

y. On or about December 2, 2003, the defendant James Anderson took bets and handled large sums of money related to gambling at 2402 Ames Avenue, Omaha, Nebraska.

z. On or about December 2, 2003, Philip Moore a/k/a "Swirl" took bets at 2402 Ames Avenue, Omaha, Nebraska.

aa. On or about December 30, 2003, James Goodwin took bets at 2402 Ames Avenue, Omaha, Nebraska.

bb. On or about January 11, 2004, Ronald Jackson took bets at 2402 Ames Avenue, Omaha, Nebraska.

cc. On or about January 31, 2004, Ronald Jackson took bets and paid winnings at 2402 Ames Avenue, Omaha, Nebraska.

dd. On or about February 1, 2004, Ronald Jackson counted money and handled gambling receipts at 2402 Ames Avenue, Omaha, Nebraska.

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

INSTRUCTION 7A

Count I charges a conspiracy, that is, an agreement to conduct an illegal gambling business. In order to prove that the agreement was unlawful as required by the first element of Instruction Number 7, the government must prove beyond a reasonable doubt that two or more persons agreed or came to an understanding to conduct a business devoted to gambling and that business (1) was intended to involve five or more persons; (2) was intended to violate the gambling laws of the State of Nebraska; and (3) was intended to have a substantially continuous operation for a period of more than thirty days or gross revenues of \$2,000 or more on any one day.

“Bookmaking” is a form of gambling and involves the business of establishing certain terms and conditions applicable to given bets or wagers, usually called a line or odds, and then accepting bets from members of the public on either side of the wagering proposition with a view toward making a profit from a percentage or commission collected from the bettors or customers for the privilege of placing the bets. You are instructed that “bookmaking” is a crime in the State of Nebraska.

Keep in mind that Count I charges a conspiracy to violate the law and not the actual commission of the crime of conducting an illegal gambling business. In order to prove the defendant is guilty of Count I, the government need not prove that the crime of conducting an illegal gambling business was actually committed.

INSTRUCTION NO. 7B

It is not necessary that the act done in furtherance of the conspiracy be in itself unlawful. It may be perfectly innocent in itself.

It is not necessary that defendant have personally committed the act, known about it, or witnessed it. It makes no difference which of the conspirators did the act. This is because a conspiracy is a kind of "partnership" so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts of every other member done to further their scheme.

It is not necessary that the Government prove, beyond a reasonable doubt, that more than one act was done in furtherance of the conspiracy. It is sufficient if the Government proves beyond a reasonable doubt, one such act; but in that event, in order to return a verdict of guilty, you must unanimously agree upon which act was done.

INSTRUCTION NO. 8

With regard to Count I, the government contends that the members of the conspiracy included the defendant James Anderson and one or more of the following individuals: James Goodwin; Ronald Jackson; Stephen Linebarger; Philip Moore; and Richard Tibbs.

Their “agreement” or “understanding” need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

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 joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an

understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

In determining whether the alleged conspiracy existed you may consider the actions and statements of all the alleged participants. The agreement may be inferred from all the circumstances and the conduct of the alleged participants. In determining whether the defendant became a member of the conspiracy you may consider only the acts and statements of that particular defendant.

INSTRUCTION NO. 9

With regard to Count I, it is not necessary for the government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

INSTRUCTION NO. 10

The crime of conducting an illegal gambling business as charged in Count II of the indictment has three essential elements, which are:

One: Beginning on or about September 11, 2002, and continuing to on or about February 1, 2004, in the District of Nebraska, the defendant knowingly conducted a gambling business in which five or more persons were involved in the operation of the business;

Two: Such gambling business was a violation of the laws of the State of Nebraska; and

Three: Such gambling business was in substantially continuous operation for a period more than thirty days or had a gross revenue of \$2,000 or more in any one day.

“Bookmaking” is a form of gambling and involves the business of establishing certain terms and conditions applicable to given bets or wagers, usually called a line or odds, and then accepting bets from members of the public on either side of the wagering proposition with a view toward making a profit from a percentage or commission collected from the bettors or customers for the privilege of placing the bets. You are instructed that “bookmaking” is a crime in the State of Nebraska.

The word, “conduct,” as it is used in connection with the gambling business, means to perform any act, function or duty which is necessary to or helpful in the ordinary operation of the business. A person may be found to conduct a gambling

business even though he is only an agent or employee having no part in the management or control of the business and no share in the profits.

It is not necessary to prove that the same five people, including the defendant, owned, financed or conducted such gambling business throughout more than a thirty-day period or that the defendant knew the names or identities of any given number of people who might have been so involved. Neither must it be proved that bets were accepted every day over a greater than thirty-day period, nor that such activity constituted the primary business or employment of the defendant.

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

INSTRUCTION NO. 11

A person may also be found guilty of conducting an illegal gambling business, as charged in Count II of the indictment, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of the crime.

In order to have aided and abetted the commission of the crime a person must:

(1) have known that the crime of conducting an illegal gambling business was being committed or going to be committed; and

(2) have knowingly and intentionally acted in some way for the purpose of aiding the commission of the crime.

For you to find the defendant guilty of the crime of conducting an illegal gambling business by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the essential elements of the crime of conducting an illegal gambling business were committed by some person or persons and that the defendant aided and abetted the commission of the 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.

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 a determination of 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.

INSTRUCTION NO. 13

Ellen Anderson is an alternate juror. The law requires that I excuse Ms. Anderson prior to deliberations but not before the lawyers have argued their case and I have given the jury my instructions. Thus, after the lawyers have argued the case and I have instructed the jury, Ms. Anderson will be excused and the remaining 12 jurors will deliberate.

INSTRUCTION NO. 14

Your verdict must be agreed to by all twelve of you, that is, it must be unanimous.

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 bailiff, signed by one or more jurors.

Or, you may reach my chambers directly by using the special "intercom" telephone in the jury room. The caller should clearly identify himself or herself as a member of the jury so that my staff will react accordingly. I will respond to your communication 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, 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.

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 bailiff that you are ready to return to the courtroom.

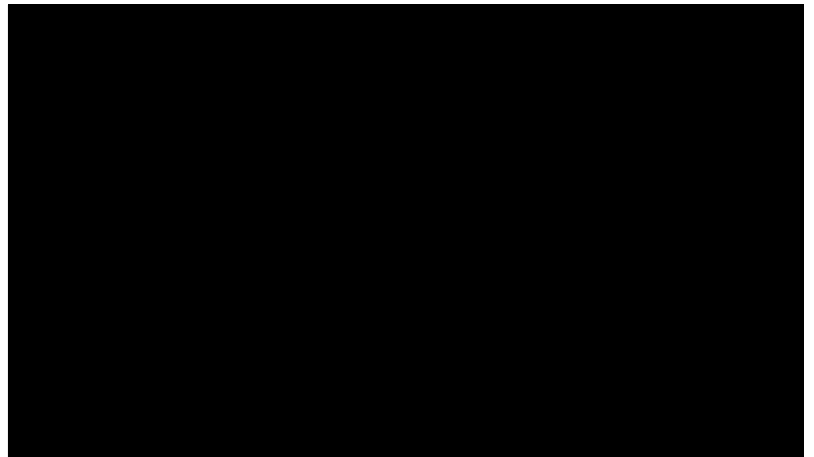
This being a criminal case, you will not hereafter be allowed to separate until your deliberations have been completed, except for meals and night's rest. If you do not agree upon a verdict by five o'clock p.m. on any given day, you may separate and return for deliberation at nine o'clock a.m. on the next business day. If you desire to deliberate after 5:00 p.m. you may do so but please notify the bailiff if that is your intention.

Please be admonished that if you separate at any time during your deliberations, you are, during any such separation, not to talk to anyone about this

case or to talk between yourselves about this case. All your deliberations should be conducted as a group in the confines of the jury room. Please also remember and follow all of the other admonitions I have given you throughout this trial for your conduct during recesses. All such instructions also continue to apply during any separations which may occur after you commence deliberations.

DATED this 8th day of April, 2005.

Submitted at 10:30 o'clock A. m.



COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES ANDERSON,

Defendant.

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VERDICT FORM

VERDICT

COUNT I

Conspiracy to Conduct Illegal Gambling Business

Find one of the following:

(Place an "X" beside one, **but only one**, of the two statements)

- _____ A. We find the Defendant guilty beyond a reasonable doubt of conspiracy to conduct an illegal gambling business.
- _____ B. We find the Defendant not guilty of conspiracy to conduct an illegal gambling business.

COUNT II

Conducting Illegal Gambling Business

Find one of the following:

(Place an "X" beside one, **but only one**, of the two statements)

- _____ A. We find the Defendant guilty beyond a reasonable doubt of conducting an illegal gambling business.
- _____ B. We find the Defendant not guilty of conducting an illegal gambling business.

EXECUTION OF VERDICT FORM

The Foreperson shall sign and date the verdict form, and such signature shall mean that the verdict of the jury was unanimous.

DATED this _____ day of _____, 2005.

FOREPERSON