

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DENISE A. CERNY,

Defendant.

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8:08CR39

**INITIAL
JURY INSTRUCTIONS**

INSTRUCTION NO. 1

DUTY

It is your duty to decide from the evidence whether the defendant is guilty or not guilty of the crime charged. From the evidence, you will decide what the facts are. You are entitled to consider the evidence in the light of your own observations and experiences in life. You may use reason and common sense to draw deductions or conclusions from facts established by the evidence. You will then apply those facts to the law which I give you in these and other instructions. In that way, you will reach your verdict. You are the sole judges of the facts, but you must follow the law stated in my instructions whether you agree or disagree with the law stated in the instructions.

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 a witness's testimony, or you may believe part of a witness's testimony, or you may decide that you do not believe any of a witness's testimony.

In deciding what testimony to believe, you may consider a witness's intelligence, the witness's opportunity to have seen or heard the things involved in the witness's testimony, a witness's memory, the motive a witness has for testifying a certain way, a witness's manner while testifying, whether a witness has said something different at an earlier time, the general reasonableness of a witness's testimony and the extent to which the witness's testimony is consistent with other evidence that you believe.

Do not allow sympathy or prejudice to influence you. The law requires that your verdict be just, that is, unaffected by anything except the evidence, your common sense, and the law stated in my instructions.

Anything that I may say or do during the trial must not be taken by you as an indication of what I think of the evidence or what I think your verdict should be.

Finally, please remember that only the defendant, and not anyone else, is on trial here, and the defendant is on trial only for the crime charged, and not for anything else.

INSTRUCTION NO. 2
PRESUMPTION OF INNOCENCE

The law presumes that the defendant is innocent. The defendant has no burden to prove that she is innocent. Hence, even though the defendant stands charged, the trial begins with no evidence against her.

INSTRUCTION NO. 3

CONSTITUTIONAL RIGHT NOT TO TESTIFY

Because a defendant is not required to prove his or her innocence, a defendant's decision to exercise his or her constitutional right not to testify cannot be considered by you or discussed among jurors in arriving at your verdict.

INSTRUCTION NO. 4

BURDEN OF PROOF

The government carries the burden to prove beyond a reasonable doubt each essential element of the crime charged against the defendant. 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
EVIDENCE; LIMITATIONS

You should understand that an indictment is simply an accusation. It is not evidence of anything. The defendant has pled not guilty. The defendant is presumed to be innocent unless proved guilty beyond a reasonable doubt.

The word “evidence” includes: the testimony of witnesses; documents and other things received as exhibits; any facts that have been stipulated, that is, formally agreed to by the parties; and any facts that have been judicially noticed, that is, facts which I say you must accept as true.

The following things are not evidence:

1. Statements, arguments, questions and comments by lawyers are not evidence.
2. Objections are not evidence.

Lawyers have a right to object when they believe something is improper under the rules of evidence. You should not be influenced by the lawyer’s objection or by my ruling on the objection. If I sustain an objection to a question, ignore the question. If I overrule the objection, treat the answer like any other answer. Do not attempt to draw any inference in favor of either side as the result of the objection.

3. Testimony that I strike from the record or tell you to disregard is not evidence. You must not consider such information when reaching your verdict.

4. Anything you see or hear about this case outside the courtroom is not evidence. You must disregard such information when reaching your verdict.

5. A particular item of evidence is sometimes received for a limited purpose. I will tell you when that situation arises and will instruct you on the purpose for which the evidence can and cannot be used.

6. Finally, you may have heard the phrases “direct evidence” and “circumstantial evidence.” You should not be concerned with those phrases, since the law makes no distinction between the weight to be given to direct or to circumstantial evidence. You should give all the evidence the weight and value which you believe that the evidence is entitled to receive.

INSTRUCTION NO. 6
BENCH CONFERENCES AND RECESSES

During this trial it may become necessary for me to talk with the lawyers outside your hearing, either by having a bench conference while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of the conference is to decide how certain evidence is to be treated under the rules of evidence or to decide a particular procedure to be followed in the case. We will do what we can to minimize the number and length of these conferences.

INSTRUCTION NO. 7

NOTE-TAKING

If you wish, you may take notes to help you remember what witnesses said. Notes may be helpful to you because at the end of the trial, you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it may not be practical for the court reporter to read back lengthy testimony. Therefore, pay close attention to the testimony that is given.

If you do take notes, please keep your notes to yourself until you and the other jurors go to the jury room to decide the case. Do not let note-taking distract you to the point that you miss hearing other testimony from the witness.

During the trial, documents and other physical items may be received in evidence. You will not be supplied with a list of exhibits which are received in evidence. Therefore, you may wish to make notes about the exhibits, especially their description and number, so that you can locate and refer to exhibits while you are deliberating.

When we take our recess each day for the lunch-time break and when we take our recess each night, please take your notes to the jury room and leave your notes there. The courtroom deputy will take custody of your notes and secure them.

No one will read your notes but you. Your notes will be destroyed after the trial is over.

INSTRUCTION NO. 8
CONDUCT OF THE JURY

To insure fairness, you, as jurors, must obey the following rules:

1. Do not talk among yourselves about this case or about anyone involved with this case until the end of the case when you go to the jury room to decide on your verdict.

2. Do not talk with anyone else about this case or about anyone involved with it until the trial has ended and you have been discharged as jurors.

3. During the course of this trial and when you are outside the courtroom, do not listen to or allow anyone to tell you anything about this case. Do not allow anyone to talk to you about anyone involved with this case until the trial has ended and I have accepted your verdict. If anyone tries to talk to you about this case during the trial, please promptly report the matter to me.

4. During the trial do not talk with or speak to any of the parties, lawyers, or witnesses involved in this case. Do not even pass the time of day with any of them. You must not only do justice in this case, but you must also give the appearance of doing justice. For instance, if a person from one side of the lawsuit sees you talking to a person from the other side, even if it is on a matter unconnected with this trial or simply to pass the time of day, such contact might arouse unwarranted suspicion about your fairness. If a lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator, or encounter each other elsewhere while this trial is taking place, remember that court rules prohibit those persons from talking or visiting with you as well.

5. You must decide this case on the basis of evidence presented in the courtroom. Therefore, do not read any news stories or articles about the case or about anyone

involved with this case. Do not listen to any radio or television reports about the case or about anyone involved with it. Until the trial is over, avoid reading any newspapers and avoid listening to any TV or radio newscasts. There may be news reports of this case, and if there are, you might find yourself inadvertently reading or listening to something before you realize what you are doing.

6. Do not do any research or make any investigation, on the Internet or otherwise, on your own concerning this case. Do not use or refer to any dictionary, reference, or law book, or the Internet, concerning any aspect of this case, including any evidence introduced. Do not visit the scene of any incident mentioned in this case. Further, you are not to communicate between yourselves or with anyone else about the case via cellphone, text-message, e-mail, twitter, or otherwise, or to access the Internet with those devices to do research or otherwise investigate the case.

7. Do not form any opinion regarding any fact or issue in the case until you have received the entire evidence, have heard arguments of counsel, have been instructed as to the law of the case, and have retired to the jury room. Do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and have discussed the evidence with the other jurors.

8. Do not be influenced by sympathy or prejudice. Do not indulge in any speculation, guess, or conjecture. Do not make any inferences unless they are supported by the evidence.

INSTRUCTION NO. 9

OUTLINE OF TRIAL

The trial will proceed in the following manner:

The government, through the Assistant United States Attorney, will make an opening statement. The defendant may, but does not have to, make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The government will then present its evidence, and the defendant may cross-examine witnesses who have testified in the government's case. After the government has presented its case, the defendant may, but does not have to, present evidence, testify, or call witnesses. If a defendant calls witnesses, government counsel may cross-examine those witnesses.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. I will instruct you further on the law. After that you will retire to deliberate on your verdict.

When you reach your verdict, we will return to the courtroom where your foreperson will deliver the verdict to me. After the verdict is announced, one of the lawyers may ask that the jury be polled, that is, that you each be asked individually whether the verdict is your true verdict.

Once you have delivered your verdict, you will be discharged and will be free to leave.

INSTRUCTION NO. 10

NATURE OF THE CASE; NATURE OF INDICTMENT

This is a criminal case brought by the United States of America against the defendant, Denise A. Cerny, Case No. 8:08CR39. The parties to this criminal lawsuit are the government, represented by Assistant United States Attorneys Andrea Belgau and Sandra Denton, and the defendant Denise Cerny, represented by counsel Kirk Naylor. The charge against the defendant is set forth in an indictment. You must understand that the indictment is simply an accusation. The indictment is not evidence. In order to help you follow the evidence in this case, I will now summarize the crime charged in the indictment which the government must prove beyond a reasonable doubt.

Count I of the indictment charges that from on or about May 10, 2007, through on or about June 7, 2007, in the District of Nebraska, the defendant, Denise Cerny, harbored and concealed Phillip A. DiMari, a person for whom an arrest warrant had been issued under the provisions of a law of the United States, so as to prevent the discovery and arrest of Phillip A. DiMari, after notice and knowledge of the fact that a warrant had been issued for the apprehension of Phillip A. DiMari, in violation of 18 U.S.C. § 1071.

The defendant has pled not guilty to the charges of the indictment. Because she has pled not guilty, the law requires you to presume her to be innocent. This presumption of innocence may be overcome only if the government proves, beyond a reasonable doubt, each element of the crime charged against the defendant.

INSTRUCTION NO. 11

COUNT I: ESSENTIAL ELEMENTS

The crime of harboring a person for whom a federal arrest warrant has been issued has three essential elements:

1. That the defendant knew about a federal warrant issued for Phillip A. DiMari's arrest,
2. That the defendant engaged in physical acts that aided Phillip A. DiMari in avoiding detection and apprehension, and
3. That the defendant acted with intent to prevent Phillip A. DiMari's discovery and arrest.

If you find the government has proved all of these elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in Count I; if you find the government has not proved each of these elements beyond a reasonable doubt, then you must find the defendant not guilty.

INSTRUCTION NO. 12

PROOF OF INTENT OR KNOWLEDGE

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 the knowledge or intent of the defendant.

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

“ON OR ABOUT” EXPLAINED

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