IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CASE NO. 8:02CR286
	)	
Plaintiff,	)	
	)	
vs.	)	COURT'S CHARGE
	)	TO THE JURY
COLLEEN R. ANSON,	)	
	)	
Defendant.	)	

INSTRUCTION NO. 1

INTRODUCTION

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 of or 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.

Eighth Circuit Model Instruction 3.01

INSTRUCTION NO. 2

DUTY

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.

Eighth Circuit Instruction 3.02

INSTRUCTION NO. 3

NO INVESTIGATION

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

JUDGE – NO OPINION

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.

INSTRUCTION NO. 5

PRESUMPTION OF INNOCENCE

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

INSTRUCTION NO. 6

DESCRIPTION OF CHARGES; INDICTMENT NOT EVIDENCE; PRESUMPTION OF INNOCENCE; BURDEN OF PROOF

The Indictment in this case charges the Defendant, Colleen R. Anson, with two different crimes. Under Count I, the Indictment charges that the Defendant committed the crime of conspiracy to commit bank larceny. Under Count II, the Indictment charges that the Defendant committed the crime of bank larceny. The Defendant has pleaded not guilty to each of those 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 her. 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.

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.

Eighth Circuit Model Instruction 3.06

INSTRUCTION NO. 7

COUNT I: ELEMENTS OF OFFENSE; BURDEN OF PROOF

The crime of conspiracy to commit bank larceny, as charged in Count I of the Indictment, has four essential elements, which are:

One: From on or about February 6, 2002, through on or about February 9, 2002, two or more persons reached an agreement or came to an understanding to commit the offense of bank larceny;

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, she 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 knowingly did one or more of the following overt acts for the purpose of carrying out or carrying forward the agreement or understanding:

a) On or about February 6, 2002, Colleen R. Anson told Stephanie Ashe that the individual pretending to be the robber would be provided with $20.00 bait bills which would need to be destroyed because of the ability to trace the serial numbers;

b) On or about February 4, 2002, Colleen R. Anson moved the surveillance camera at the UMB Bank so that it would not capture the image of persons appearing at the entry gate of the bank;

c) On or about February 9, 2002, Stephanie Ashe and John A. McDonald, who was recruited by Stephanie Ashe to pose as the robber, purchased materials to be used by McDonald to disguise his appearance for the planned robbery at the UMB Bank;

d) On or about February 9, 2002, Stephanie Ashe drove John A. McDonald to the UMB Bank for the purpose of carrying out the fake robbery;

e) On or about February 9, 2002, John A. McDonald entered the UMB Bank in Papillion, Nebraska, and upon seeing a teller whom he believed to be the teller identified by Stephanie Ashe as Colleen, pretended to be a bank robber and demanded cash;

f) On or about February 9, 2002, Colleen R. Anson provided John A. McDonald money in the care, custody and control of the UMB Bank in an amount in excess of $1,000; and

g) On or about February 9, 2002, Stephanie Ashe and John A. McDonald, while counting the proceeds of the heist, identified the $20.00 bait bills and destroyed the same.

If the government has proved all four of these essential elements beyond a reasonable doubt as to the Defendant, Colleen R. Anson, then you must find the Defendant, Colleen R.

Anson, guilty of the crime charged in Count I of the Indictment. Otherwise, you must find the Defendant, Colleen R. Anson, not guilty of the crime charged in Count I of the Indictment.

Eighth Circuit Model Instruction 5.06A

INSTRUCTION NO. 8

CONSPIRACY: “AGREEMENT” EXPLAINED

The government must prove that the Defendant, Colleen R. Anson, reached an agreement or understanding with at least one other person.

The "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.

You must decide, after considering all of the evidence, whether the conspiracy alleged in Count I of the Indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the Defendant, Colleen R. Anson, voluntarily and intentionally joined the

conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the Defendant Colleen R. Anson's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the Defendant, Colleen R. Anson.

Eighth Circuit Model Instruction 5.06B

INSTRUCTION NO. 9

CONSPIRACY: SUBSTANTIVE OFFENSE: ELEMENTS

To assist you in determining whether there was an agreement or understanding to commit bank larceny as charged in Count I of the Indictment, you are advised that the elements of bank larceny are:

One: The taking and carrying away of money in the care or custody of the UMB Bank in Papillion, Nebraska;

Two: Such taking was with the intent to steal or purloin;

Three: The deposits of the UMB Bank in Papillion, Nebraska were then insured by the Federal Deposit Insurance Corporation; and

Four: The value of the money exceeded $1,000.

Keep in mind that Count I of the Indictment charges a conspiracy to commit bank larceny and not that bank larceny was committed.

Eighth Circuit Model Instructions 5.06C, 6.18.2113A
Fifth Circuit Model Instruction 2.80

INSTRUCTION NO. 10

CONSPIRACY: “OVERT ACT” EXPLAINED

It is not necessary that the acts done in furtherance of the conspiracy be in themselves unlawful. They may be perfectly innocent.

It is not necessary that Defendant, Colleen R. Anson, have personally committed the acts, known about them, or witnessed them. It makes no difference which of the conspirators did the acts. 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.

Eighth Circuit Model Instruction 5.06D

INSTRUCTION NO. 11

CONSPIRACY: SUCCESS IMMATERIAL

It is not necessary for the Government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

Eighth Circuit Model Instruction 5.06E

INSTRUCTION NO. 12

COUNT II: ELEMENTS OF OFFENSE; BURDEN OF PROOF; BANK LARCENY

The crime of bank larceny, as charged in Count II of the Indictment, has four essential elements, which are:

One: The Defendant, Colleen R. Anson, took and carried away money in the care or custody of the UMB Bank in Papillion, Nebraska;

Two: Such taking was with the intent to steal or purloin;

Three: The deposits of the UMB Bank in Papillion, Nebraska were then insured by the Federal Deposit Insurance Corporation; and

Four: The value of the money exceeded $1,000.

If the government has proved all of these essential elements beyond a reasonable doubt as to the Defendant, Colleen R. Anson, then you must find the Defendant, Colleen R. Anson, guilty of the crime charged in Count II of the Indictment. If the government failed to prove any of these elements beyond a reasonable doubt, you must find the Defendant, Colleen R. Anson, not guilty of this crime charged in Count II of the Indictment.

Eighth Circuit Model Instruction 6.18.2113A
Fifth Circuit Model Instruction 2.80

INSTRUCTION NO. 13

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 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.

Eighth Circuit Model Instruction 7.05

INSTRUCTION NO. 14

"ON OR ABOUT"

The Indictment charges that the offenses were 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 the offenses were committed on a date reasonably near the alleged date.

INSTRUCTION NO. 15

REASONABLE DOUBT

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.

Eighth Circuit Model Instruction 3.11

INSTRUCTION NO. 16

EVIDENCE

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, the facts that have been stipulated -- that is, formally agreed to by the parties, the facts that have been judicially noticed -- that is, facts which I say you may, but are not required to, accept as true, even without evidence.

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.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other

purpose. I have told you when that occurred, and instructed you on the purposes for which the item can and cannot be used.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

Some of you may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

Eighth Circuit Model Instruction 1.03

INSTRUCTION NO. 17

CREDIBILITY OF WITNESSES

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 the Defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 18

WITNESSES WHO HAVE PLEADED GUILTY

You have heard evidence that certain witnesses, John A. McDonald and Stephanie Ashe, have pleaded guilty to crimes which arose out of the same events for which the Defendant, Colleen R. Anson, is on trial here. You must not consider the guilty pleas of John A. McDonald or Stephanie Ashe as any evidence of guilt on the part of the Defendant, Colleen R. Anson. You may consider a witness's guilty plea only for the purpose of determining how much, if at all, to rely upon that witness's testimony.

Eighth Circuit Model Criminal Jury Instruction 2.19

INSTRUCTION NO. 19

NOTES

Some of you may have taken notes during the trial; others of you may have chosen not to take notes. If you did take notes, remember that these notes are not themselves evidence, but are instead merely memory aids. You must reach a verdict based upon your independent recollection of the evidence presented during the trial, not upon your notes or another juror's notes. Notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

INSTRUCTION NO. 20

“UNANIMOUS” DEFINED

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

INSTRUCTION NO. 21

ELECTION OF FOREPERSON; DUTY TO DELIBERATE

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 courtroom deputy, 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, 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 the verdict 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 courtroom deputy that you are ready to return to the courtroom.

Eighth Circuit Model Instruction 3.12