

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	
)	
DOZIER T. ALLEN, JR.,)	CAUSE NO: 2:07 CR 132
WANDA JOSHUA, and)	
ANN MARIE KARRAS)	

JURY INSTRUCTIONS

Dated: April 7, 2009

s/ Philip P. Simon
PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT

INSTRUCTION 1

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

INSTRUCTION 2

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations. A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony. I have taken judicial notice of certain facts that may be regarded as matters of common knowledge. You may accept those facts as proved, but you are not required to do so.

INSTRUCTION 3

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness. In evaluating the testimony of any witness, you may consider, among other things:

- the witness's intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

INSTRUCTION 4

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an “inference.” A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

INSTRUCTION 5

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

INSTRUCTION 6

Certain things are not evidence. I will list them for you:

First, testimony and exhibits that I struck from the record, or that I told you to disregard, are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

INSTRUCTION 7

It is proper for an attorney to interview any witness in preparation for trial.

INSTRUCTION 8

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

INSTRUCTION 9

The indictment filed in this case is the formal method of accusing the defendants of an offense and placing the defendants on trial. The indictment is not evidence against the defendants and does not create any inference of guilt. A copy of the indictment will be provided to you during deliberations.

Counts 1 and 2 of the indictment allege that Dozier Allen, Wanda Joshua and Ann Marie Karras devised and participated in a scheme and artifice to (1) defraud the Calumet Township and its citizens of their intangible right to honest services of public servants, and (2) to obtain money from Calumet Township by means of materially false and fraudulent pretenses, representations, promises and material omissions.

The defendants have pleaded not guilty to the charges.

INSTRUCTION 10

The defendants are presumed to be innocent of each of the charges. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendants are guilty as charged. The government has the burden of proving the guilt of the defendants beyond a reasonable doubt. This burden of proof stays with the government throughout the case. The defendants are never required to prove their innocence or to produce any evidence at all.

INSTRUCTION 11

A defendant has an absolute right not to testify. The fact that a defendant did not testify should not be considered by you in any way in arriving at your verdict.

INSTRUCTION 12

You have heard evidence relating to an earlier grant received by the Calumet Township Trustee's Office in 1998 from the Lake County Division of Family and Children Services. There are two things you must keep in mind when considering this evidence.

First, this is evidence of acts of defendants Dozier Allen and Ann Marie Karras other than those that are charged in the indictment in this case. One of the things that the government must prove in this case is that defendants Allen and Karras acted with an intent to defraud in connection with the scheme charged in the indictment. You may consider the evidence relating to the 1998 grant only on the issue of Mr. Allen's and Ms. Karras's intent. You should consider this evidence only for this limited purpose.

Second, you are further instructed that this evidence in no way relates to defendant Wanda Joshua and you may not consider this evidence in any way in evaluating the case against Ms. Joshua.

INSTRUCTION 13

You have heard evidence that before the trial witnesses made statements that may be inconsistent with the witnesses' testimony here in court. If you find that it is inconsistent, you may consider the earlier statement only in deciding the truthfulness and accuracy of that witness's testimony in this trial. You may not use it as evidence of the truth of the matters contained in that prior statement. If that statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement.

INSTRUCTION 14

To sustain each charge of mail fraud, the government must prove the following propositions:

First, that the defendant knowingly devised or participated in the scheme to defraud or to obtain money by means of materially false pretenses, representations, promises or material omissions, as described in the indictment.

Second, that the defendant did so knowingly and with the intent to defraud; and

Third, that for the purpose of carrying out the scheme or attempting to do so, the defendant used or caused the use of the United States Mails in the manner charged in the particular count.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt as to a particular count, then you should find the defendant guilty of that count.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt as to a particular count, then you should find the defendant not guilty of that count.

INSTRUCTION 15

A scheme is a plan or course of action formed with the intent to accomplish some purpose.

A scheme to defraud is a scheme that is intended to deceive or cheat another and (1) to obtain money, or (2) to deprive the citizens of Calumet Township of their right to honest services, which includes the honest discharge of public duties by public servants and the duty imposed upon a public servant under the Indiana conflict of interest law. To deprive another of honest services means to misuse one's office for personal gain.

INSTRUCTION 16

Counts 1 and 2 of the indictment allege that the defendants committed certain specific

acts as part of the scheme to defraud. The government need not prove that each and every specific alleged act was committed by a defendant. However, the government must prove that a defendant committed at least one of the specific acts which are alleged in that count. In order to find that the government has proved a defendant committed a specific act, the jury must unanimously agree on which specific act the defendant committed.

For example, if some of you find a defendant participated in a scheme to obtain money and the rest of you find that same defendant participated in a scheme to deprive the citizens of Calumet Township of honest services, then there is no unanimous agreement on the scheme. On the other hand, if all jurors find that a defendant schemed to obtain money or schemed to deprive the citizens of Calumet Township of honest services, then there is unanimous agreement.

INSTRUCTION 17

The citizens of Calumet Township have a right to the honest discharge of public duties by public servants of Calumet Township.

INSTRUCTION 18

The indictment alleges that the defendants violated Indiana law as part of the scheme to defraud the citizens of Calumet Township of the defendants' honest services. I am about to tell you about the Indiana conflict of interest law. You may consider this law together with all the other evidence in determining a defendant's intent and to establish whether a defendant deprived the citizens of Calumet Township of honest services.

The Indiana conflict of interest law does not prohibit a public servant from receiving compensation for services provided as a public servant. The law does prohibit a public servant from knowingly having a pecuniary interest in or deriving a profit from a contract or purchase connected with an action by the governmental entity he or she serves unless:

- (A) The public servant was not a member or on the staff of the governing body empowered to contract or purchase on behalf of Calumet Township;
- (B) The functions and duties performed by the public servant were unrelated to the contract or purchase; and
- (C) The public servant made a disclosure which:
 - (1) was in writing,
 - (2) described the contract or purchase to be made by Calumet Township,
 - (3) described the pecuniary interest that the defendant had in the contract or purchase,
 - (4) was affirmed under penalty of perjury,
 - (5) submitted to Calumet Township and accepted by the Township Board in a public meeting prior to final action on the contract or purchase, and
 - (6) filed it within 15 days after final action on the contract or purchase with

the State Board of Accounts and the Clerk of the Circuit Court in Lake County.

A public servant has a pecuniary interest in a contract or purchase if the contract or purchase would result in or was intended to result in an ascertainable increase in the income or net worth of the public servant.

Dozier Allen was a public servant because he was elected to serve as Calumet Township Trustee. Wanda Joshua and Ann Karras were public servants because each was paid by Calumet Township to perform official functions.

INSTRUCTION 19

A false pretense, representation, promise or omission is “material” if it has the natural tendency to influence, or is capable of influencing, the decision of the decision making body to which it was addressed.

INSTRUCTION 20

The phrase “intent to defraud” means that the acts charged were done knowingly with the intent to deceive or cheat the citizens of Calumet Township in order to (1) cause a gain of money to a defendant or (2) to deprive the citizens of Calumet Township of their right to honest services, which includes the honest discharge of public duties by public servants and the duty imposed upon a public servant under the Indiana conflict of interest law.

INSTRUCTION 21

When the word “knowingly” is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident.

Knowledge may be proved by the defendant's conduct, and by all the facts and circumstances surrounding the case.

You may infer knowledge from a combination of suspicion and indifference to the truth. If you find that a person had a strong suspicion that things were not what they seemed or that someone had withheld some important facts, yet shut his eyes for fear of what he would learn, you may conclude that he acted knowingly, as I have used that word. You may not conclude that the defendant had knowledge if he was merely negligent in not discovering the truth.

INSTRUCTION 22

Good faith on the part of a defendant is inconsistent with intent to defraud, an element of both of the charges in this case. The burden is not on any of the defendants to prove his or her good faith; rather, the government must prove beyond a reasonable doubt that the defendants acted with intent to defraud.

INSTRUCTION 22A

You may consider the advice given by counsel to a defendant in deciding whether the defendant possessed the requisite intent to defraud if you find that before taking action, the defendant in good faith sought the advice of an attorney whom the defendant considered competent for the purpose of securing advice on the lawfulness of the defendant's possible future conduct, and made a full and accurate report to the attorney of all material facts which the defendant knew, and acted strictly in accordance with the advice of the attorney who had been given a full report.

INSTRUCTION 23

The government must prove that the United States mails were used to carry out the scheme, or were incidental to an essential part of the scheme.

In order to use or cause the use of the United States mails, a defendant need not actually intend that use to take place. You must find that the defendant knew that it would occur in the ordinary course of business, or that the defendant knew facts from which that use could reasonably have been foreseen.

The defendant need not actually or personally use the mail.

Although an item mailed need not by itself contain a fraudulent representation or promise or request for money, it must further or attempt to further the scheme.

Each separate use of the mail in furtherance of the scheme to defraud constitutes a separate offense.

INSTRUCTION 24

The indictment charges that the offenses were committed “on or about” certain months or dates. The government must prove that the alleged offenses happened reasonably close to those months or dates but is not required to prove that the alleged offenses happened in those exact months or on those exact dates.

INSTRUCTION 25

Even though the defendants are being tried together, you must give each of them separate consideration. In doing this, you must analyze what the evidence shows about each defendant, leaving out of consideration any evidence that was admitted solely against some other defendant or defendants. Each defendant is entitled to have his or her case decided on the evidence and the law that applies to that defendant.

INSTRUCTION 26

The offense of mail fraud may be committed by more than one person. A defendant's guilt may be established without proof that the defendant personally performed every act constituting the crime charged.

INSTRUCTION 27

Any person who knowingly aids, counsels, commands, induces or procures the commission of an offense may be found guilty of that offense. That person must knowingly associate with the criminal activity, participate in the activity, and try to make it succeed.

If a defendant knowingly caused the acts of another, the defendant is responsible for those acts as though he or she personally committed them.

INSTRUCTION 28

You should not speculate why any other person whose name you may have heard during the trial or who is named in the indictment is not currently on trial before you.

INSTRUCTION 29

If you find any of the defendants guilty, it will then be my job to decide what punishment should be imposed. In considering the evidence and arguments that have been given during the trial, you should not guess about the punishment. It should not enter into your consideration or discussions at any time.

INSTRUCTION 30

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate forms, and each of you will sign it.

INSTRUCTION 31

Each count of the indictment charges each defendant named in that count with having committed a separate offense.

You must give separate consideration both to each count and to each defendant. You must consider each count and the evidence relating to it separate and apart from every other count.

You should return a separate verdict as to each defendant and as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to that defendant under any other count.

INSTRUCTION 32

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

INSTRUCTION 33

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.