

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Cause No. 2:15-cr-43
)
 MOHAMED FADIGA,)
)
 Defendant.)

FINAL JURY INSTRUCTIONS

Dated: June 1, 2016.

s/ Philip P. Simon _____
CHIEF JUDGE
UNITED STATES DISTRICT COURT

Instruction No. 1

Members of the jury, I will now instruct you on the law that you must follow in deciding this case. You must follow all of my instructions about the law, even if you disagree with them. This includes the instructions I gave you before the trial, any instructions I gave you during the trial, and the instructions I am giving you now.

As jurors, you have two duties. Your first duty is to decide the facts from the evidence that you saw and heard here in court. This is your job, not my job or anyone else's job.

Your second duty is to take the law as I give it to you, apply it to the facts, and decide if the government has proved Mr. Fadiga guilty beyond a reasonable doubt.

You must perform these duties fairly and impartially. Do not let sympathy, prejudice, fear, or public opinion influence you.

You must not take anything I said or did during the trial as indicating that I have an opinion about the evidence or about what I think your verdict should be.

Instruction No. 2

The charge against Mr. Fadiga is in a document called an indictment. You will have a copy of the indictment during your deliberations.

The indictment charges Mr. Fadiga with knowingly and with intent to defraud, possessing at least fifteen counterfeit or unauthorized access devices, in a manner affecting interstate commerce.

Mr. Fadiga has pled not guilty to the charge. The indictment is simply the formal way of telling Mr. Fadiga what crime he is accused of committing. It is not evidence that Mr. Fadiga is guilty. It does not even raise a suspicion of guilt.

Instruction No. 3

Mr. Fadiga is presumed innocent of the charge. This presumption continues throughout the case, including during your deliberations. It is not overcome unless, from all the evidence in the case, you are convinced beyond a reasonable doubt that Mr. Fadiga is guilty as charged.

The government has the burden of proving Mr. Fadiga's guilt beyond a reasonable doubt. This burden of proof stays with the government throughout the case.

The defendant is never required to prove his innocence. He is not required to produce any evidence at all.

Instruction No. 4

You must make your decision based only on the evidence that you saw and heard here in court. Do not consider anything you may have seen or heard outside of court, including anything from the newspaper, television, radio, the internet, or any other source.

The evidence includes only what the witnesses said when they were testifying under oath, the exhibits that I allowed into evidence, and the stipulations that the lawyers agreed to. A stipulation is an agreement that certain facts are true or that a witness would have given certain testimony.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. If what a lawyer said is different from the evidence as you remember it, the evidence is what counts. The lawyers' questions and objections likewise are not evidence.

A lawyer has a duty to object if he thinks a question is improper. If I sustained objections to questions the lawyers asked, you must not speculate on what the answers might have been.

If, during the trial, I struck testimony or exhibits from the record, or told you to disregard something, you must not consider it.

Instruction No. 5

Give the evidence whatever weight you decide it deserves. Use your common sense in weighing the evidence, and consider the evidence in light of your own everyday experience.

People sometimes look at one fact and conclude from it that another fact exists. This is called an inference. You are allowed to make reasonable inferences, so long as they are based on the evidence.

Instruction No. 6

You may have heard the terms “direct evidence” and “circumstantial evidence.”

Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves a fact.

You are to consider both direct and circumstantial evidence. The law does not say that one is better than the other. It is up to you to decide how much weight to give to any evidence, whether direct or circumstantial.

Instruction No. 7

Do not make any decisions simply by counting the number of witnesses who testified about a certain point.

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.

What is important is how truthful and accurate the witnesses were and how much weight you think their testimony deserves.

Instruction No. 8

A defendant has an absolute right not to testify or present evidence. You may not consider in any way the fact that Mr. Fadiga did not testify or present evidence. You should not even discuss it in your deliberations.

Instruction No. 9

Part of your job as jurors is to decide how believable each witness was, and how much weight to give each witness' testimony. You may accept all of what a witness says, or part of it, or none of it.

Some factors you may consider include:

- the intelligence of the witness;
- the witness' ability and opportunity to see, hear, or know the things the witness testified about;
- the witness' memory;
- the witness' demeanor;
- whether the witness had any bias, prejudice, or other reason to lie or slant the testimony;
- the truthfulness and accuracy of the witness' testimony in light of the other evidence presented; and
- inconsistent statements or conduct by the witness.

Instruction No. 10

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

Instruction No. 11

You have heard evidence that before the trial, witnesses made statements that may be inconsistent with testimony here in court. You may consider an inconsistent statement made before trial only to help you decide how believable the witnesses' testimony was here in court. If an earlier statement was made under oath, then you can also consider the earlier statement as evidence of the truth of whatever the witness said in the earlier statement.

Instruction No. 12

You have heard testimony that Mr. Fadiga made statements to Officer Kenneth Williams and others. You must decide whether Mr. Fadiga actually made the statements and, if so, how much weight to give the statements. In making these decisions, you should consider all of the evidence, including Mr. Fadiga's personal characteristics and the circumstances under which the statements may have been made.

Instruction No. 13

Certain summaries were admitted in evidence. You may use those summaries as evidence.

Instruction No. 14

Certain summaries and charts were shown to you to help explain other evidence that was admitted. These summaries and charts are not themselves evidence or proof of any facts, so you will not have these particular summaries and charts during your deliberations.

Instruction No. 15

If you have taken notes during the trial, you may use them during deliberations to help you remember what happened during the trial. You should use your notes only as aids to your memory. The notes are not evidence. All of you should rely on your independent recollection of the evidence, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impressions of each juror.

Instruction No. 16

The indictment charges that the crime happened “on or about” March 17, 2015. The government must prove that the crime happened reasonably close to that date. The government is not required to prove that the crime happened on the exact date.

Instruction No. 17

In deciding your verdict, you should not consider the possible punishment for Mr. Fadiga. If you decide that the government has proved Mr. Fadiga guilty beyond a reasonable doubt, then it will be my job to decide on the appropriate punishment.

Instruction No. 18

The indictment charges Mr. Fadiga with possession of multiple access devices with intent to defraud. In order for you to find Mr. Fadiga guilty of this charge, the government must prove each of the four following elements beyond a reasonable doubt:

1. Mr. Fadiga knowingly possessed fifteen or more access devices; and
2. Those access devices were counterfeit or unauthorized; and
3. Mr. Fadiga possessed those access devices with the intent to defraud;
and
4. Mr. Fadiga's conduct affected interstate commerce.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt, then you should find Mr. Fadiga guilty.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt, then you should find Mr. Fadiga not guilty.

Instruction No. 19

A person acts with intent to defraud if he acts knowingly with the intent to deceive or cheat the victim in order to cause a gain of money or property to the defendant or another or the potential loss of money or property to another.

Instruction No. 20

“Access device” includes a credit card, debit card, or a personal identification number such as that used to obtain cash at an ATM. It also means a card that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value.

Instruction No. 21

“Counterfeit access device” means any access device that is counterfeit or altered. The term also includes an identifiable component of an access device or a counterfeit access device.

Instruction No. 22

“Unauthorized access device” means any access device that is obtained with intent to defraud.

Instruction No. 23

“Interstate commerce” involves business, trade, travel, transportation, or communication between any place in a state and any place outside that state. A defendant’s conduct affects commerce if the natural consequences of the defendant’s actions had some effect on commerce, however minimal.

Instruction No. 24

A person acts knowingly if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether Mr. Fadiga acted knowingly, you may consider all of the evidence, including what Mr. Fadiga did or said.

Instruction No. 25

A person possesses an object if he has the ability and intention to exercise direction or control over the object, either directly or through others.

Instruction No. 26

Once you are all in the jury room, the first thing you should do is choose a foreperson. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. You may discuss the case only when all jurors are present.

Once you start deliberating, do not communicate about the case or your deliberations with anyone except other members of your jury. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, such as cell phone, smart phone, iPhone, computer, text messaging, instant messaging, the internet, or services like Facebook, Twitter, or any other method of communication.

If you need to communicate with me while you are deliberating, send a note through the court security officer. The note should be signed by the Foreperson, or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer. Please be advised that transcripts of trial testimony are not available to you. You must rely on your collective memory of the testimony.

If you send me a message, do not include the breakdown of any votes you may have conducted. In other words, do not tell me that you are split 6-6, or 8-4, or whatever your vote happens to be.

Instruction No. 27

A verdict form has been prepared for you. You will take this form with you to the jury room.

When you have reached unanimous agreement, your foreperson will fill in, date, and sign the verdict form. Each of you will sign it.

Advise the court security officer once you have reached a verdict. When you come back to the courtroom, I will read the verdict aloud.

Instruction No. 28

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

You should make every reasonable effort to reach a verdict. In doing so, you should consult with each other, express your own views, and listen to your fellow jurors' opinions. Discuss your differences with an open mind. Do not hesitate to re-examine your own view 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 just because of the opinions of your fellow jurors or just so that there can be a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence. You should deliberate with the goal of reaching an agreement that 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.