

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEPHEN J. BARTHOLD,

Defendant.

ORDER

07-CR-48-S

Attached for the parties' consideration are draft voir dire questions, jury instructions and a verdict form.

Entered this 18th day of September, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEPHEN J. BARTHOLD,

Defendant.

STATEMENT OF THE CASE
AND VOIR DIRE

07-CR-048-S

Statement of the case: This is a criminal case, in which the defendant, Stephen J. Barthold, is charged with engaging in a conspiracy to cash forged and stolen checks in Northwest Wisconsin and Minnesota. The defendant has entered a plea of not guilty to these charges.

Have any of you heard of this case before today? Would this affect your ability to serve impartially as a juror in this case?

1. Scheduling: this case will begin today and will conclude tomorrow. Are any of you actually unable to sit as jurors because of this schedule?

2. Is there anything about the nature of the charges in this case that might affect your ability to be impartial in this case?

3. The court reads the pattern instructions:

Presumption of Innocence. The defendant is presumed to be innocent of the charges. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty.

Burden of Proof. The government has the burden of proving the defendant's guilt beyond a reasonable doubt, and this burden remains on the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence.

The defendant has an absolute right not to testify. The fact that the defendant does not testify cannot be considered by you in any way in arriving at your verdict.

Would any of you be unable or unwilling to follow these instructions?

4. Ask counsel to introduce themselves, the defendant, and the case agent. Ask whether jurors know them.

5. Invite each juror, in turn, to rise, and provide the following information:

Name, age, and city or town of residence.

Marital status and number and ages of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse and any adult children.

Any military service, including branch, rank and approximate date of discharge.

[*list continues on next page*]

Level of education, school where you studied and major areas of study, if any.

Memberships in any groups or organizations, and your role in them.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

Whether you regularly listen to talk radio and if so, to which programs.

6. Do any of you in the jury box know each other from before today?

7. Have any of you, your relatives or close friends ever worked for any bank, credit union, or other financial institution? Would this affect your ability to be impartial in this case?

8. Have any of you, your relatives or close friends ever had your driver's license or some other identification document stolen or misused by someone else? Would this affect your ability to be impartial in this case?

9. Have any of you, your relatives or close friends ever had been the victim of any other actual or attempted misuse of your identifying information such as your credit card numbers or social security numbers? Would this affect your ability to be impartial in this case?

10. Have any of you, your relatives or close friends ever been the victims of any other type of fraud scheme or any attempted fraud scheme? Would this affect your ability to be impartial in this case?

11. Do any of you, by virtue of past dealings with the United States government, or for any reason, have any bias for or against the government in a criminal case?

12. Have any of you, your relatives, or close friends ever worked for the local, county, state, or federal government? Would this affect your ability to be impartial in this case?

13. Have any of you, your relatives, or close friends ever worked for, or had other professional contact with any law enforcement, investigative or security company or agency, or any prison? Would this affect your ability to be impartial in this case?

14. Would any of you judge the credibility of a witness who was a law enforcement officer or government employee differently from other witnesses solely because of his or her official position?

15. If the defendant were to choose to testify, would any of you judge his credibility differently from other witnesses solely because he is the defendant?

16. Have any of you, your relatives, or close friends ever been accused of, or convicted of any criminal offense? [Sidebar if necessary]. Would this affect your ability to be impartial in this case?

17. Have any of you, your relatives, or close friends ever been the victim of any crime? Would this affect your ability to be impartial in this case?

18. Have any of you, your relatives, or close friends ever been a witness in a trial? Is there anything about this experience that might affect your ability to be impartial in this case?

19. Have any of you, your relatives, or close friends ever had any negative experience with any lawyer, any court, or any legal proceeding that would affect your ability to be impartial in this case?

20. How many of you have served previously as a juror in another case? Please tell us in which court you served, approximately when, the type of cases you heard, whether you were foreperson, and the verdicts.

21. If at the conclusion of the trial you were not to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of not guilty?

22. If at the conclusion of the trial you were to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of guilty?

23. The court will instruct you on the law to be applied in this case. You are required to accept and follow the court's instructions in that regard, even though you may disagree with the law. Is there any one of you who cannot accept this requirement?

24. Do you know of any reason whatever, either suggested by these questions or otherwise, why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

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JURY INSTRUCTIONS

07-CR-48-S

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 my instructions on the law, even if you disagree with them. Each of the instructions is important. You must follow all of them.

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

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.

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.

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.

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 age; the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things 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.

You should judge the defendant's testimony in the same way as you judge the testimony of any other witness.

You should use common sense in weighing the evidence. Consider the evidence in light of your own observations in life. You are allowed to draw reasonable inferences from facts. In other words, you may look at one fact and conclude from it that another fact exists. Any inferences you make must be reasonable and must be based on the evidence in the case.

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 that tend to show whether a 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. You should consider all the evidence in the case, including the circumstantial evidence, in reaching your verdict.

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 must not influence your verdict.

Third, questions and objections by the lawyers are not evidence. Lawyers 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 collective memory is what counts.

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

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.

You have received evidence of a statement said to be made by the defendant to _____ . You must decide whether the defendant did in fact make

this statement. If you find that the defendant did make the statement, then you must decide what weight, if any, you feel the statement deserves. In making this decision, you should consider all matters in evidence having to do with the statement, including those concerning the defendant himself/herself and the circumstances under which the statement was made.

The defendant has an absolute right not to testify. In arriving at your verdict, you must not consider the fact that the defendant did not testify.

You have heard evidence of acts of the defendant other than those charged in the indictment. Specifically, _____. You may consider this evidence only on the question of _____. You should consider this evidence only for this limited purpose.

You have heard evidence that the defendant has been convicted of a crime. You may consider this evidence only in deciding whether the defendant's testimony is truthful in whole, in part, or not at all. You may not consider it for any other purpose. A conviction of another crime is not evidence of the defendant's guilt of the crime for which the defendant is now charged.

You have heard [reputation/opinion] evidence about the character trait of _____ for truthfulness [or untruthfulness]. You should consider this evidence in deciding the weight that you will give to _____'s testimony.

You have heard [reputation and/or opinion] evidence about the defendant's character trait for [truthfulness, peacefulness, etc]. You should consider character evidence together with and in the same way as all the other evidence in the case.

You have heard evidence that before the trial witnesses made statements that may be inconsistent with the witnesses's 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.

_____ has/have admitted lying under oath. You may give his/her/their testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

You have heard testimony that _____ has received benefits from the government in connection with this case. Specifically, _____. You may give the testimony of these witnesses such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

You have heard testimony from _____ who stated that he was involved in the commission of the alleged crimes charged against the defendant. You may give the testimony of this witness such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

The witness _____ has pleaded guilty to a crime arising out of the same allegations for which the defendant now is on trial. You may give the testimony of this witness such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care. Moreover, the guilty pleas of this witness cannot be considered as evidence against the defendant.

You have heard testimony from a witness who received immunity; that is, a promise from the government that any testimony or other information he provided would not be used against him in a criminal case. You may give his testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

You have heard a witness give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness' qualifications and all of the other evidence in the case.

THE INDICTMENT

The defendant is charged in the indictment as follows:

[The court reads the indictment]

The defendant has entered a plea of not guilty to these charges.

The indictment in this case is the formal method of accusing the defendant of crimes and placing the defendant on trial. It is not evidence against the defendant and does not create any implication of guilt.

The defendant is not on trial for any act or any conduct not charged in the indictment.

The defendant is presumed to be innocent of the charges against him. This presumption remains with the defendant throughout every stage of the trial and during 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 defendant is guilty as charged.

The government has the burden of proving the defendant's guilt beyond a reasonable doubt. This burden remains on the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

The indictment charges that the offenses were committed "on or about" certain dates. The government must prove that the offenses happened reasonably close to these dates but it is not required to prove that the alleged offense happened on this exact date.

THE ELEMENTS OF COUNT 1: CONSPIRACY

In Count 1 the government has charged the defendant with conspiring to obtain and to misuse stolen, forged and altered bank checks. A conspiracy is an agreement between two or more persons to accomplish an unlawful purpose. To sustain this charge, the government must prove these elements:

- 1) The conspiracy as charged in Count 1 existed;
- 2) The defendant knowingly became a member of the conspiracy with an intention to further the conspiracy; and
- 3) An overt act was committed by at least one conspirator in furtherance of the conspiracy.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of Count 1.

If, on the other hand, you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you must find the defendant not guilty of Count 1.

A conspiracy may be established even if its purpose was not accomplished.

To be a member of the conspiracy, the defendant need not join at the beginning or know all the other members or the means by which its purpose was to be accomplished. The government must prove beyond a reasonable doubt that the defendant was aware of the common purpose and was a willing participant.

As to the first element of Count 1, in deciding whether the charged conspiracy existed, you may consider the actions and statements of every one of the alleged participants. An agreement may be proved from all the circumstances and the words and conduct of all of the alleged participants which are shown by the evidence.

As to the second element of Count 1, in deciding whether the defendant joined the charged conspiracy, you must base your decision solely on what the defendant personally did or said. In determining what the defendant personally did or said, you may consider his own words and acts. You also may consider the words and acts of other people to help you determine what the defendant personally did or said, and you may use the words and acts of other people to help you understand and interpret the defendant's own words and acts. Keep in mind, however, that the defendant's membership in the charged conspiracy can only be proved by his own words or acts.

By themselves, the defendant's presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish the defendant's guilt.

The defendant's association with conspirators is not by itself sufficient to prove his participation or membership in a conspiracy.

If a defendant performed acts that advanced a criminal activity but had no knowledge that a crime was being committed or was about to be committed, those acts alone are not sufficient to establish the defendant's guilt.

To meet its burden of proof as to Count 1, the government must prove that the defendant knowingly and intentionally joined the charged conspiracy, knowing the conspiracy's aim and intending to achieve it.

In meeting its burden of proof for the third element of Count 1, the government does not need to prove all of the overt acts charged in the conspiracy. It only needs to prove one. However, you must unanimously agree on at least one overt act. It is not sufficient for some of you to find that the government has proved one overt act and the rest of you to find that the government has proved a different overt act. All twelve of you must agree on a particular act or acts.

The overt act proved may itself be a lawful act.

THE ELEMENTS OF COUNT 2: POSSESSING COUNTERFEITED CHECKS

In Count 2 the government has charged defendant with possessing counterfeited securities. To sustain this charge, the government must prove these elements:

- 1) The defendant possessed a counterfeited security of an organization as charged in the count that you are considering;
- 2) The defendant did so knowingly and with the intent to deceive another person or organization.

If you find from your consideration of all the evidence that both of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of Count 2.

If, on the other hand, you find from your consideration of all the evidence that either of these propositions has not been proved beyond a reasonable doubt, then you must find the defendant not guilty of Count 2.

The term “counterfeited” means a document that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety.

The term “security” means a check.

The term “organization” means a legal entity other than a government established for any purpose, and includes a corporation, company, association, foundation, institution, union, or any other association of persons which operates in or the activities of which affect interstate or foreign commerce.

Possession of an object is the ability and intention to control it. Possession may be sole or joint. Possession may exist even when a person is not in physical contact with the object, but knowingly has the power and intention to exercise direction and control over it, either directly or through others.

As to the first element of Count 2, the government has charged defendant with possessing four different counterfeited checks. To meet its burden of proof for Count 2, the government only needs to prove the elements of the offense for one of these checks. However, you must unanimously agree on at least one check. It is not sufficient for some of you to find that the government has proved the elements as to one check and the rest of you to find that the government has proved the elements as to a different check. All twelve of you must agree on a particular check or checks.

THE ELEMENTS COUNT 3: UNLAWFUL POSSESSION OF STOLEN IDENTIFICATION DOCUMENT

In Count 3 the government has charged defendant with unlawfully possessing another person's identification document. To sustain this charge, the government must prove these elements:

- 1) The defendant knowingly possessed the item described in Count 3;
- 2) This item was an identification document;
- 3) The defendant did not have lawful authority to possess this identification document; and
- 4) The defendant possessed this identification document with intent to commit and in connection with the federal crime of uttering a counterfeited security in violation of Title 18, United States Code Section 513(a).

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of Count 3.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you must find the defendant not guilty of Count 3.

The term "identification document" means a document made or issued by or under the authority of the United States Government or any State of the United States, which when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

Title 18, United States Code, Section 513(a) states:

Whoever makes, utters or possesses a counterfeited security of a State or of an organization with intent to deceive another person, organization, or government, shall be guilty of a crime.

THE ELEMENTS OF COUNT 4: POSSESSING A CHECK-COUNTERFEITING IMPLEMENT

In Count 4 the government has charged defendant with possessing a check counterfeiting implement. To sustain this charge, the government must prove these elements:

- 1) The defendant possessed the specified implement;
- 2) This implement was particularly suited for making counterfeited checks; and
- 3) The defendant possessed it with the intent to make counterfeited checks.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of Count 4.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you must find the defendant not guilty of Count 4.

THE ELEMENTS OF COUNT 5: POSSESSING A STOLEN MOTOR VEHICLE

In Count 5 the government has charged the defendant with unlawful possession of a stolen motor vehicle. To sustain this charge, the government must prove these elements:

- 1) The Chevy S-10 pick-up truck specified in Count 5 had been stolen;
- 2) After this truck had been stolen it was moved across a state border into Wisconsin;
- 3) Thereafter the defendant knowingly possessed this truck; and
- 4) At the time the defendant possessed this truck he knew that it was stolen.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of Count 5.

On the other hand, if you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of Count 5.

As used in Count 5, the term “stolen” means any taking with the intent to deprive the owner of his/her rights and benefits of ownership. The taking may be accomplished through the seizure of the pick-up truck, or through the use of false pretenses, trickery, or misrepresentation in obtaining possession. It is not necessary, however, that the taking be initially unlawful. Even if possession is first acquired lawfully, the taking falls within the meaning of “stolen” if the defendant thereafter forms the intent to deprive the owner of his/her ownership interests.

The term interstate commerce means movement across state lines.

Whenever the word "knowingly" is used in these instructions, it means that a defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake, accident or other innocent reason. Knowledge may be proved by the defendant's conduct, and by all the facts and circumstances surrounding the case.

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

Any person who knowingly aids, abets, counsels, commands, induces or procures the commission of a crime is guilty of that crime. However, that person must knowingly associate himself with the criminal venture, participate in it, and try to make it succeed.

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

The defendant's presence at the scene of a crime and knowledge that a crime is being committed is not alone sufficient to establish the defendant's guilt. A defendant's association with persons involved in a criminal enterprise is not by itself sufficient to prove his or her participation or membership in a criminal enterprise.

Good faith on the part of a defendant is inconsistent with intent to defraud or deceive, an element of all eight counts. The burden is not on the defendant to prove his good faith; rather, the government must prove beyond a reasonable doubt that the defendant acted with intent to defraud or intent to deceive.

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.

Verdict forms have been prepared for you.

[Court reads verdict forms.]

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

Each count of the indictment charges the defendant with having committed a separate offense. You must give separate consideration to each count. You must consider each count and the evidence relating to it separate and apart from every other count. Your verdict of

guilty or not guilty of an offense charged in one count should not control your decision as to any other count.

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.

If it becomes necessary during your deliberations to communicate with the court, you may send a note by a bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the court by any means other than a signed writing, and the court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

You will note from the oath about to be taken by the bailiffs that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

You must not reveal to any person, including the court, your numerical split on any verdict question until you have reached a unanimous verdict on every defendant and every count.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEPHEN J. BARTHOLD,

Defendant.

VERDICT

07-CR-48-S

COUNT 1

We, the Jury in the above-entitled cause, find the defendant, Stephen J. Barthold,

("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

COUNT 2

We, the Jury in the above-entitled cause, find the defendant, Stephen J. Barthold,

("Guilty" or "Not Guilty")

of the offense charged in Count 2 of the indictment.

COUNT 3

We, the Jury in the above-entitled cause, find the defendant, Stephen J. Barthold,

("Guilty" or "Not Guilty")

of the offense charged in Count 3 of the indictment.

COUNT 4

We, the Jury in the above-entitled cause, find the defendant, Stephen J. Barthold,

("Guilty" or "Not Guilty")

of the offense charged in Count 4 of the indictment.

COUNT 5

We, the Jury in the above-entitled cause, find the defendant, Stephen J. Barthold,

("Guilty" or "Not Guilty")

of the offense charged in Count 5 of the indictment.

Presiding Juror

Madison, Wisconsin

Date: _____