

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

RALPH LANG,

Defendant.

POST TRIAL
JURY INSTRUCTIONS

12-cr-43-wmc

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.

CONSIDERATION OF THE EVIDENCE

All of the introductory instructions that I gave you at the beginning of this trial still are in effect. I will give you copies of those instructions to take back to the jury room with you.

You have received evidence of a statement said to be made by the defendant to _____ . You must decide whether the defendant did make the statement. If you find that the defendant did make the statement, then you must decide what weight, if any, you believe 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, and the circumstances under which the statement was made.

In deciding the believability of witnesses, you should judge defendant's testimony in the same way as you judge the testimony of any other witness.

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 questions of _____. You should consider this evidence only for this limited purpose.

You have heard evidence that _____ have been convicted of crimes. You may consider this evidence only in deciding whether the testimony of any of these witnesses is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

You have heard evidence that the defendant has been convicted of crimes. 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 now is 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 all the other evidence in the case and in the same way.

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

A statement made by the defendant before trial that is inconsistent with the defendant's testimony here in court may be used by you as evidence of the truth of the matters contained in it, and also in deciding the truthfulness and accuracy of the defendant's testimony in this trial.

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

The witnesses _____ gave 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.

Certain summaries are in evidence. They truly and accurately summarize the contents of voluminous books, records or documents, and should be considered together with and in the same way as all other evidence in the case.

Certain summaries are in evidence. Their accuracy has been challenged by the defendant. Thus, the original materials upon which the exhibits are based have also been admitted into evidence so that you may determine whether the summaries are accurate.

You have heard recorded conversations. These recorded conversations are proper evidence and you may consider them, just as any other evidence. When the recordings were played during the trial, you were furnished transcripts of the recorded conversations prepared by government agents. The recordings are the evidence, and the transcripts were provided to you only as a guide to help you follow as you listen to the recordings. The transcripts are not evidence of what was actually said or who said it. It is up to you to decide whether the transcripts correctly reflect what was said and who said it. If you noticed any difference between what you heard on the recordings and what you read in the transcripts, you must rely on what you heard, not what you read. And if after careful listening, you could not hear or understand certain parts of the recordings, you must ignore the transcripts as far as those parts are concerned.

THE INDICTMENT

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

The defendant is charged in the indictment as follows:

COUNT 1

On or about May 25, 2011, in the Western District of Wisconsin, the defendant, Ralph Lang, willfully attempted: (1) to injure to intimidate, and to interfere with persons, by force and threat of force, because they were and had been participating in and enjoying the benefits of a program and activity receiving Federal financial assistance; and (2) to intimidate persons, by force and threat of force, from participating in and enjoying the benefits of a program and activity receiving financial assistance. Lang's acts included the attempted use of a dangerous weapon, specifically a firearm, and an attempt to kill.

COUNT 2

On or about May 25, 2011, in the Western District of Wisconsin, the defendant, Ralph Lang, knowingly and intentionally used, carried, possessed and discharged a firearm, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, specifically, the violation [*of Title 18 United States*

Code, Section 245] charged in Count 1 of this indictment,
which is incorporated by reference herein.

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

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 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 defendant is guilty as charged.

The government has the burden of proving the defendant'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 or to produce any evidence at all.

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

ELEMENTS OF THE CHARGE: COUNT 1

To sustain the charge against the defendant in Count 1 the government must prove these elements:

(1) That the defendant:

(A) willfully attempted to injure people by force,

or

(B) willfully attempted to intimidate people by force or threat of force,

or

[C] willfully attempted to interfere with people by force or threat of force;

and

(2) defendant made this attempt:

(A) because these people were, or had been, participating in or enjoying the benefits of a program or activity provided by the Planned Parenthood [clinic/facility] at 3706 Orin Road, Madison, Wisconsin,

or

(B) to intimidate people from participating in or enjoying the benefits of a program or activity provided by the Planned Parenthood [clinic/facility] at 3706 Orin Road, Madison, Wisconsin

and

(3) the program or activity at Planned Parent that was the target of this attempt by defendant received Federal financial assistance.

If 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 must find the defendant not guilty of Count 1.

If, on the other hand, you find from your consideration of all the evidence that the government has proved each of these elements beyond as reasonable doubt, then you

should find the defendant guilty of Count 1, unless you decide that the defendant is not guilty by reason of insanity.

If the defendant has proved the defense of insanity by clear and convincing evidence, the you should find the defendant not guilty of Count 1 by reason of insanity. Clear and convincing evidence is not as high a burden as proof beyond a reasonable doubt.

ELEMENTS OF THE CHARGE: COUNT 2

To sustain the charge against the defendant in Count 2 the government must prove these elements:

(1) The defendant committed the crime charged in Count 1 of the indictment and was not insane;

(2) The defendant knowingly used, or carried, or possessed, or discharged a firearm; and

(3) The defendant did so in furtherance of the crime charged in Count 1 of the indictment.

If 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 must find the defendant not guilty of Count 2.

If, on the other hand, you find from your consideration of all the evidence that the government has proved each of these elements beyond as reasonable doubt, then you should find the defendant guilty of Count 2, unless you decide that the defendant is not guilty by reason of insanity.

If the defendant has proved the defense of insanity by clear and convincing evidence, the you should find the defendant not guilty of Count 2 by reason of insanity.

Clear and convincing evidence is not as high a burden as proof beyond a reasonable doubt.

INSANITY

You must find the defendant not guilty by reason of insanity if you find that he has proven by clear and convincing evidence that at the time he committed the offense, he had a severe mental disease or defect that rendered him unable to appreciate the nature and quality of what he was doing, or that rendered him unable to appreciate that what he was doing was wrong [that is, contrary to public morality and contrary to law].

[If you find the defendant not guilty by reason of insanity, then the court will commit the defendant to a suitable facility until the court finds that he is eligible to be released.]

THE REQUIREMENT OF UNANIMITY

The first element of Count One sets forth in subparagraphs (A), (B) and [C] three different ways that the government may prove the first element. To meet its burden of proof on the first element, the government only has to prove one of these three things. However, before you may find that the government has met its burden of proof, you must unanimously agree on at least one of these three things. For instance, it is not enough for some of you to find that the government has proved the act charged in element (1)(A) and the rest of you to find that the government has proved the act charged in element (1)(B).

To the same effect, the second element of Count sets forth two different ways that the government may prove the second element. To meet its burden of proof on the second element, the government only has to prove one of these two things. Again,

however, before you may find that the government has met its burden of proof, you must unanimously agree on at least one of these two things.

SPECIAL VERDICT QUESTIONS FOR COUNT 1

If you find the defendant guilty of Count 1, then you must answer two special verdict questions for Count 1. You are to answer these questions only if you find the defendant guilty of Count 1.

Question No. (1) asks: Did defendant Ralph Lang's acts in violation of the charge in Count 1 include the attempted use of a dangerous weapon? You are to answer this question "Yes" or "No." Question No. (2) asks: Did defendant Ralph Lang's acts in violation of the charge in Count 1 include an attempt to kill? You are to answer this question "Yes" or "No."

It is the government's burden to prove beyond a reasonable doubt that the answer to either Question No. (1) or No. (2) should be "Yes." If the government does not prove this as to the question you are considering, then you must answer that question "No."

SPECIAL VERDICT QUESTION FOR COUNT 2

With regard to the second element of Count 2, the government does not have to prove each of the acts listed, it only has to prove one of them. However, you must unanimously agree on at least one of the acts charged before you may find that the government has met its burden of proof on this element. It is not enough for some of you agree that the government has proved one act and the rest of you to agree on some other act.

If you find the defendant guilty of Count 2, then you must answer a special verdict question for Count 2. You are to answer this special verdict question only if you find the defendant guilty of Count 2. The special verdict question for Count 2 asks you

to specify which acts listed in the second element of Count 2 the government has proved beyond a reasonable doubt. You are to put an “X” next to each act for which you unanimously find that the government has met its burden of proof. You are to leave blank the space next to each act for which you do not unanimously agree that the government has not met its burden of proof.

DEFINITION OF “ATTEMPT”

As the verb “attempt” is used in Count 1 and in Special Verdict Questions No. (1) and No. (2) for Count 1, a person attempts to commit the specified act if he: (1) knowing takes a substantial step toward committing the act specified in Count 1 or in the Special Verdict Question that you are considering and (2) he takes this substantial step with the intent to commit this specified act. The substantial step must be an act that strongly corroborates that the defendant intended to carry out the act specified in Count 1 or the Special Verdict Question that you are considering.

DEFINITION OF “KNOWINGLY”

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 the defendant acted knowingly, you may consider all of the evidence, including what the defendant did or said.

DEFINITION OF “WILLFULLY”

A person acts “willfully” if he acts voluntarily and intentionally, and with the intent to do something the law forbids. [*From 1001, PJI at 279*]

DEFINITION OF “INTIMIDATION”

“Intimidation” means to say or do something that would make a reasonable person feel threatened under the circumstances. *[From 2113(a) PJI at 540]*,

DELIBERATIONS

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

A verdict form has been prepared for you. [Court reads verdict form.]

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

Although you have seen that the trial is being recorded by a court reporter, you should not expect to be able to use trial transcripts in your deliberations. You will have to rely on your own memories.

Each count of the indictment charges the defendant with having committed a separate offense. You must consider each count and the evidence relating to it separate and apart from the other count. You should return a separate verdict 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 the defendant under the other count.]*

The verdict must represent the considered judgment of each juror. Whether your verdict is guilty or not guilty, it 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 do 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 consistent with the individual judgment of each juror. You are impartial judges of the facts. Your only 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 count.