

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

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

07-CR-25-C

DARWIN MOORE and
BRUCE KNUTSON,

Defendants.

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

Entered this 6th day of June, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

Voir Dire: U.S. v. Moore & Knutson, 07-CR-25-C

Statement of the case: This is a criminal case, in which the defendants are charged with conspiring to steal money from the Ho-Chunk Casino near Baraboo by attempting to win a cash drawing by submitting over 9300 entry forms in a manner not provided for in the drawing's rules. The defendants have entered pleas of not guilty to this charge.

- i. Have any of you heard of this case before today? Would this affect your ability to serve impartially as a juror in this case?
- ii. Scheduling: this case will begin today and will conclude tomorrow. Are any of you actually unable to sit as jurors because of this schedule?
- iii. Is there anything about the nature of the charge in this case that might affect your ability to be impartial in this case?
- iv. The court reads Federal Criminal Jury Instructions of the Seventh Circuit:

The defendants are presumed to be innocent of the charges. This presumption remains with the defendants 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 a defendant is guilty.

The government has the burden of proving the guilt of a defendant beyond a reasonable doubt, and this burden remains on the government throughout the case. A defendant is not required to prove his or her innocence or to produce any evidence.

The fact the defendants have been charged with crimes is not evidence against them and it does not create any implication of guilt.

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

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. Each defendant is entitled to have his case decided on the evidence and the law that applies to that defendant.

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

- v. Ask counsel to introduce themselves, the defendants, and the case agent. Ask whether jurors know them.

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

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse or partner.

Any military service, including branch, rank and approximate date of discharge.
Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

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

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

- viii. Have any of you, your close friends, or members of your family ever worked for the Ho-Chunk Casino, or any other casino? Would this affect your ability to be impartial in this case?

- ix. How many of you, or members of your immediate family, have ever visited the Ho-Chunk Casino to [gamble/participate in gaming activities]? Follow up [*at sidebar?*]: How often? which games? Would this affect your ability to be impartial in this case?

- x. Do any of you have any strong opinions about legalized gambling and casinos in general, or about the participation of Indian Tribes in legalized gambling and casinos? [*Sidebar*] What are your opinions? Would they affect your ability to be impartial in this case?
- xi. How many of you ever have bought lottery tickets or participated in some other form of drawing that involved large prizes? Follow up [*sidebar?*]: Nature of the lottery/drawing? Win anything? Any hard feelings about losing? Would any of this affect your ability to be impartial in this case?
- xii. Apart from what you already have told us, do any of you have any strong opinions about large-prize lotteries or drawings? [*Sidebar*] What are your opinions? Would they affect your ability to be impartial in this case?
- xiii. Have any of you, your relatives, or close friends ever been accused of, or convicted of any criminal offense? [*Sidebar*] Would this affect your ability to be impartial in this case?
- xiv. 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?
- xv. 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?
- xvi. 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?
- xvii. 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?
- xviii. If either defendant were to choose to testify, would any of you judge the defendant's credibility differently from other witnesses solely because it was the defendant who was testifying?
- xix. 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?

- xx. 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?
- xxi. 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?
- xxii. 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.
- xxiii. If at the conclusion of the trial you were to be convinced of a defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of guilty?
- xxiv. If at the conclusion of the trial you were not to be convinced of a 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?
- xxv. 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?
- xxvi. 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?

JUROR BACKGROUND INFORMATION

When asked to do so by the court, please stand and provide the following information about yourself:

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse.

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

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

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

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

UNITED STATES OF AMERICA,

Plaintiff,

JURY INSTRUCTIONS

v.

07-CR-25-C

DARWIN MOORE and
BRUCE KNUTSON,

Defendants.

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 a 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 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. 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 a lawyer to interview any witness in preparation for trial.

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. You may not consider or even discuss that statement in any way when you are deciding if the government has proven its case against the other defendant.

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

You have heard evidence of acts of 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 any other crime for which that 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/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 a 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 that 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 defendants. 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.

THE INDICTMENT

The defendants are charged in the indictment as follows:

[court reads the indictment]

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

The defendants are not on trial for any act or any conduct not charged in the indictment.

The defendants are presumed to be innocent of the charge. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome as to a defendant unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant you are considering is guilty as charged.

The government has the burden of proving the guilt of a defendant beyond a reasonable doubt. This burden of proof stays with the government throughout the case. A defendant is never required to prove his innocence or to produce any evidence at all.

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

THE ELEMENTS OF THE OFFENSE

The indictment charges that each of the defendants joined a conspiracy to violate 18 U.S.C. § 1167(b), a federal criminal statute that is set out below. A conspiracy is an agreement between two or more persons to accomplish an unlawful purpose. To sustain the charge against either defendant, the government must prove these elements:

- (1) The conspiracy charged in the indictment existed;
- (2) The defendant whom you are considering knowingly became a member of this conspiracy with an intention to further the conspiracy; and
- (3) At least one conspirator committed an overt act 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 as to the defendant whom you are considering, then you should find that defendant guilty.

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 as to the defendant whom you are considering, then you must find that defendant not guilty.

Title 18, U.S.C. § 1167(b) provides:

Whoever [*abstracts, purloins, wilfully misapplies, or*] takes and carries away with intent to steal, any money, funds, or other property of a value in excess of \$1,000 belonging to a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be punished according to law.

The term “intent to steal” in § 1167(b) means to take with the intent to deprive the owner of the rights and benefits of ownership. [*Pattern Instruction for 2113*]

OR

The term “intent to steal” in § 1167(b) means to take money funds or property with the wrongful intent to deprive the owner of the rights and benefits of ownership without the owner’s full consent. [*United States v. Kucik*, 909 F.2d 206, 212 (7th Cir. 1990)].

To prove that the charged conspiracy existed, the government does not need to prove that any actual violation of §1167(b) occurred. What it must prove is that a defendant knowingly and intentionally joined the charged conspiracy, knowing the aims of the conspiracy and intending to achieve those aims.

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

To be a member of a conspiracy, a 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 a defendant was aware of the common purpose and was a willing participant.

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.

In deciding whether a particular defendant joined the charged conspiracy, you must base your decision solely on what that defendant personally did or said. In determining what a 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 a defendant's membership in the charged conspiracy can only be proved by his own words or acts.

It is not necessary that all of the overt acts charged in the indictment be proved. You must, however, unanimously agree on at least one overt act to find that the government has proved Element (3) of the charged offense. The overt act proved may itself be a lawful act.

By themselves, a 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.

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

If the 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.

The government must prove that a defendant knowingly and intentionally joined the charged conspiracy, knowing the conspiracy's aim and intending to achieve it.

As used throughout these instructions, all forms of the verb "to know" and the adverb "knowingly" mean that a 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 a 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 or her eyes for fear of what he or she would learn, then you may conclude that this person acted knowingly as I have used that word. You may not conclude that the defendant had knowledge if he was merely negligent in not discovery the truth.

The government is not required to produce direct evidence to establish a defendant's intent. The government may prove a defendant's intent by means of circumstantial evidence alone. In determining the defendant's intent, you may consider all of his statements, acts and omissions, as well as all other facts and circumstances in evidence that indicate the defendant's state of mind.

Good faith, or the absence of an intent to defraud, constitutes a complete defense to any charge involving fraud. The good faith defense requires a genuine belief by the defendant that the representations alleged to be fraudulent were true at the time he or she made them.

The burden of proving good faith does not rest with a defendant because the defendants do not have any obligation to prove anything in this case. It is the government's burden to prove to you, beyond a reasonable doubt, that a defendant acted with the specific intent to defraud as alleged in the charges.

An offense 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.

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

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

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. Verdict forms have been prepared for you. *[Court reads the verdict forms.]*

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

You must give separate consideration to each defendant. Your verdict of guilty or not guilty as to one defendant may not control your decision as to the other defendant.

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 defendant and every count.

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

UNITED STATES OF AMERICA,

Plaintiff,

VERDICT

v.

07-CR-25-C-1

DARWIN MOORE,

Defendant.

COUNT 1

We, the Jury in the above-entitled cause, find the defendant, DARWIN MOORE,

("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

Presiding Juror

Madison, Wisconsin

Date: _____

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRUCE KNUTSON,

Defendant.

VERDICT

07-CR-25-C-2

COUNT 1

We, the Jury in the above-entitled cause, find the defendant, BRUCE KNUTSON,

("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

Presiding Juror

Madison, Wisconsin

Date: _____