

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA)
)
 vs.) **No. 05 CR 50**
)
THOMAS P. WIERINGA)

INSTRUCTIONS GIVEN TO THE JURY

Date: May 16, 2006

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.

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.

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

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 “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.

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 another fact that is at issue. 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.

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. You are to decide this case solely on the evidence presented here in the courtroom. You must completely disregard any press, television or radio reports which you have read, seen or heard. Such reports are not evidence; therefore, you must not be influenced in any manner whatever 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.

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.

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

Defendant Thomas Wieringa is charged with the offenses of knowingly importing goods contrary to law, and removal and attempted removal of property under seizure for the purpose of preventing the government's lawful authority to take or to continue holding such property under its lawful custody and control. Mr. Wieringa has pleaded not guilty to the charges.

The defendant is 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 defendant is guilty as charged. The government has the burden of proving the guilt of the defendant 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.

You have received evidence of statements said to be made by defendant Thomas Wieringa to Department of Homeland Security Special Agent Izumi Therrien. You must decide whether the defendant did in fact make the 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 statements, including those concerning the defendant himself and the circumstances under which the statements were made.

You have heard evidence that before the trial a witness made a statement that may be inconsistent with the witness' 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' 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.

You have heard witnesses 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.

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.

I am providing you with the recordings and a player. You are not required to play the tapes, in part or in whole. You may rely, instead, on your recollections of these recordings as you heard them at trial. If you do decide to listen to a tape recording and wish to have the transcript corresponding to that recording, ask the Marshal in writing and the transcript will be given to you. You may choose to listen to the cassette without the transcript.

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

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.

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.

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 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 personally performed them.

However, 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 sustain the charge of importing goods into the United States contrary to law as charged in Count One of the indictment, the government must prove each of the following propositions:

First, the defendant fraudulently or knowingly imported or caused to be imported, contrary to law, a 1998 McLaren F-1 automobile.

Second, the defendant knew at the time of the importation that the 1998 McLaren F-1 automobile was imported contrary to law.

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.

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, then you should find the defendant not guilty.

To sustain the charge of importing goods into the United States contrary to law as charged in Count Two of the indictment, the government must prove each of the following propositions:

First, the defendant fraudulently or knowingly imported or caused to be imported, contrary to law, a 1999 Ferrari Modena 360 automobile.

Second, the defendant knew at the time of the importation that the a 1999 Ferrari Modena 360 automobile was imported contrary to law.

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.

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, then you should find the defendant not guilty.

To prove that a vehicle was imported “contrary to law” as that term is used on page 19 and on page 20 of these instructions, the government must prove one of the following propositions beyond a reasonable doubt:

1) Upon the importation of the vehicle, the defendant represented, or caused to be represented to the United States Customs Service that Paul Cherry was the owner of the vehicle, when in fact Thomas Wieringa owned the vehicle at the time of its importation, and that if the true ownership was known, the vehicle could not have been lawfully imported.

2) Upon the importation of the vehicle, the defendant represented, or caused to be represented to the United States Customs Service a value for the vehicle that was significantly lower than its actual value.

The government is required to prove only one of these propositions to prove that a particular vehicle was imported “contrary to law.” However, you must unanimously agree on which, if any, of the propositions the government has proven beyond a reasonable doubt.

To sustain the charge of destruction or removal of property to prevent seizure as charged in Count Three of the indictment, the government must prove each of the following propositions:

First, property was seized by a person authorized to make the seizure.

Second, the defendant knowingly disposed of, transferred, or otherwise took action, or knowingly attempted to dispose of, transfer, or otherwise take action, involving that seized property.

Third, the defendant did so for the purpose of preventing or impairing the government's lawful authority to take such property into its custody or control, or to continue holding such property under its lawful custody and control.

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 that charge.

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 should find the defendant not guilty of that charge.

Merchandise that is introduced or attempted to be introduced into the United States contrary to law may be seized and forfeited if —

(1) its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute; or

(2) its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license, permit, or authorization.

An appropriate customs officer is authorized to seize any property that is subject to forfeiture to the United States for violation of the customs laws.

This instruction summarizes the defendant's theory of the case.

As to Counts 1 and 2, the defendant's position is that he did not knowingly violate the laws governing the importation of vehicles, but that he instead made good faith efforts to comply with those laws and to assure that the vehicles were imported in a proper manner.

As to Count 3, the defendant's position is that he took no action for the purpose of preventing or impairing the government's authority over the McLaren, but that he instead acted in the good faith belief that the vehicle was about to be released from government control and that it would not leave the United States until issues regarding the vehicle were resolved with the United States Customs Service.

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 form, and each of you will sign it.

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.

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

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.

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.

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UNITED STATES OF AMERICA)	
)	
vs.)	No. 05 CR 50
)	
THOMAS P. WIERINGA)	Judge Kennelly

VERDICT

We, the jury, find the defendant, THOMAS P. WIERINGA, NOT GUILTY as charged in the Superseding Indictment.

_____	_____
FOREPERSON	
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

_____ Date

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FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA)
)
) **No. 05 CR 50**
)
THOMAS P. WIERINGA) **Judge Kennelly**

VERDICT

We, the jury, find the defendant, THOMAS P. WIERINGA, NOT GUILTY as charged in
Count(s) _____ of the Indictment and GUILTY as charged in Count(s)
_____ of the Indictment.

FOREPERSON

Date