

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDUARDO RODRIGUEZ-AYALA,
a/k/a Ramon Rodriguez,

Defendant.

No. 13-CR-2009-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. The fact that an interpreter was used in this trial is not evidence.
3. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
4. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
5. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
6. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 7

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached.”

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

INSTRUCTION NO. 8

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they were received by you.

INSTRUCTION NO. 9

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

Expert testimony should be considered just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all the other evidence in the case.

INSTRUCTION NO. 10

You have heard testimony that the defendant made statements to law enforcement.

It is for you to decide:

***First*, whether the defendant made the statements; and**

***Second*, if so, how much weight you should give to them.**

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NO. 11

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 12

The Indictment in this case charges the defendant with six separate crimes.

Under Count 1, the Indictment charges that, on or about August 10, 2012, in the Northern District of Iowa, the defendant knowingly possessed a document prescribed by statute or regulation as evidence of authorized stay or employment in the United States, that is, an Iowa Identification Card in the name Ramon Rodriguez, which document the defendant knew had been: 1) unlawfully obtained; and 2) procured by one or more false claims or statements, including claim(s) that: (a) the defendant's true name was "Ramon Rodriguez"; and (b) the defendant was a United States citizen, born in Arizona.

Under Count 2, the Indictment charges that, on or about August 10, 2012, in the Northern District of Iowa, the defendant falsely and willfully represented himself to be a citizen of the United States, in that the defendant claimed, in the [course] of applying for a State of Iowa driver's license, to have been born in Arizona, and therefore to be a United States citizen, when the defendant knew he had not been born in Arizona, and was not and has never been a citizen of the United States.

Under Count 3, the Indictment charges that, on or about August 10, 2012, in the Northern District of Iowa, the defendant, during and in relation to Counts 1 and 2 above, did knowingly use without lawful authority a means of identification that the defendant knew belonged to another person, including the name and date of birth of "Ramon Rodriguez," the defendant's brother.

(CONTINUED)

INSTRUCTION NO. 12 (Cont'd)

Under Count 4, the Indictment charges that, on or about August 13, 2012, in the Northern District of Iowa, the defendant willfully and knowingly made a false statement in an application for a passport with intent to induce and secure for his own use the issuance of a passport under the authority of the United States, contrary to the laws regulating the issuance of such passports and the rules prescribed pursuant to such laws, in that, in such application, the defendant stated that his name was Ramon Rodriguez, born in Arizona, which statement he knew to be false.

Under Count 5, the Indictment charges that, on or about August 13, 2012, in the Northern District of Iowa, the defendant falsely and willfully represented himself to be a citizen of the United States, in that he claimed, in the course of applying for a United States passport, to have been born in Arizona, and therefore to be a United States citizen, when the defendant knew he had not been born in Arizona, and was not and has never been a citizen of the United States.

Under Count 6, the Indictment charges that, on or about August 13, 2012, in the Northern District of Iowa, the defendant, during and in relation to Counts 4 and 5 above, did knowingly use without lawful authority a means of identification that the defendant knew belonged to another person, including the name and date of birth of "Ramon Rodriguez," the defendant's brother.

The defendant has pleaded not guilty to each of those charges.

As I told you at the beginning of the trial, the Indictment is simply the document that formally charges the defendant with the crimes for which he is on trial. The Indictment is not evidence. The defendant began the trial with a clean slate, with no evidence against him.

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INSTRUCTION NO. 12 (Cont'd)

You must presume the defendant to be innocent at the beginning of trial. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proved, beyond a reasonable doubt, each element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon the defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

INSTRUCTION NO. 13

The crime of unlawful possession of an identity document, as charged in Count 1 of the Indictment, has three elements, which are:

One, on or about August 10, 2012, in the Northern District of Iowa, the defendant knowingly possessed a document prescribed by statute or regulation as evidence of authorized stay or employment, specifically, an Iowa Identification Card in the name Ramon Rodriguez;

Two, the document was:

- (a) unlawfully obtained, or
- (b) procured by means of any false claim or statement; and

Three, the defendant knew that the document was unlawfully obtained or procured by means of any false claim or statement.

You are further instructed that an Iowa Identification Card is a document prescribed by statute or regulation as evidence of authorized stay or employment.

If the government proves all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1 of the Indictment. Otherwise, you must find the defendant not guilty of the crime charged under Count 1 of the Indictment.

INSTRUCTION NO. 14

The crime of making a false claim of United States citizenship, as charged in Count 2 of the Indictment, has four elements, which are:

One, on or about August 10, 2012, in the Northern District of Iowa, the defendant claimed to be a citizen of the United States;

Two, at the time the defendant made the claim, he was not a citizen of the United States;

Three, the defendant made the false claim knowingly and willfully; and

Four, the defendant made the false claim to someone with good reason to inquire into the defendant's citizenship.

If the government proves all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 2 of the Indictment. Otherwise, you must find the defendant not guilty of the crime charged under Count 2 of the Indictment.

INSTRUCTION NO. 15

The crime of aggravated identity theft, as charged in Count 3 of the Indictment, has five elements, which are:

One, on or about August 10, 2012, in the Northern District of Iowa, during and in relation to the crimes alleged in Counts 1 and/or 2 of the Indictment;

Two, the defendant knowingly used;

Three, without lawful authority;

Four, the means of identification, that is, the name or date of birth of Ramon Rodriguez, another actual person; and

Five, the defendant knew the means of identification, that is, the name or date of birth of Ramon Rodriguez, belonged to another actual person.

If the government proves all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 3 of the Indictment. Otherwise, you must find the defendant not guilty of the crime charged under Count 3 of the Indictment.

INSTRUCTION NO. 16

The crime of making a false statement in a passport application, as charged in Count 4 of the Indictment, has three elements, which are:

One, on or about August 13, 2012, in the Northern District of Iowa, the defendant made a false statement in an application for a United States passport, that is, the defendant stated his name was Ramon Rodriguez, born in Arizona;

Two, the defendant made the statement intending to get a United States passport for his own use; and

Three, the defendant acted knowingly and willfully.

If the government proves all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 4 of the Indictment. Otherwise, you must find the defendant not guilty of the crime charged under Count 4 of the Indictment.

INSTRUCTION NO. 17

The crime of making a false claim of United States citizenship, as charged in Count 5 of the Indictment, has four elements, which are:

One, on or about August 13, 2012, in the Northern District of Iowa, the defendant claimed to be a citizen of the United States;

Two, at the time the defendant made the claim, he was not a citizen of the United States;

Three, the defendant made the false claim knowingly and willfully; and

Four, the defendant made the false claim to someone with good reason to inquire into the defendant's citizenship.

If the government proves all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 5 of the Indictment. Otherwise, you must find the defendant not guilty of the crime charged under Count 5 of the Indictment.

INSTRUCTION NO. 18

The crime of aggravated identity theft, as charged in Count 6 of the Indictment, has five elements, which are:

One, on or about August 13, 2012, in the Northern District of Iowa, during and in relation to the crimes alleged in Counts 4 and/or 5 of the Indictment;

Two, the defendant knowingly used;

Three, without lawful authority;

Four, the means of identification, that is, the name or date of birth of Ramon Rodriguez, another actual person; and

Five, the defendant knew the means of identification, that is, the name or date of birth of Ramon Rodriguez, belonged to another actual person.

If the government proves all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 6 of the Indictment. Otherwise, you must find the defendant not guilty of the crime charged under Count 6 of the Indictment.

INSTRUCTION NO. 19

In regards to the crime of unlawful possession of an identity document, as charged in Count 1 of the Indictment, you are further instructed that:

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" has been used in these instructions it includes actual as well as constructive possession and also sole as well as joint possession.

INSTRUCTION NO. 20

In regards to the crime of making a false claim of United States citizenship, as charged in Counts 2 and 5 of the Indictment, you are further instructed that:

A “citizen of the United States” is someone born in the United States or granted citizenship through a judicial proceeding known as “naturalization.” A person born outside the United States is a citizen if both parents were United States citizens and one of them had a residence in the United States before the birth.

A “non-citizen national” is a person born in an outlying possession of the United States. Mexico is not a possession of the United States. A citizen of Mexico is not a “non-citizen national” of the United States.

An “alien” is a person who is not a citizen of the United States.

The Iowa Department of Transportation is responsible for issuing Iowa driver’s licenses and nonoperator’s identification cards. Employees of that agency may take applications for driver’s licenses or nonoperator’s identification cards and review the evidence presented for issuance of such licenses or cards, including proof of the applicant’s age, identity, citizenship and social security number.

The Secretary of State may grant and issue passports and cause passports to be granted, issued and verified in foreign countries by diplomatic and consular officers of the United States. Officers of the Department of State are authorized to issue passports and conduct investigations concerning illegal passport issuance or use.

INSTRUCTION NO. 21

In regards to the crime of aggravated identity theft, as charged in Counts 3 and 6 of the Indictment, you are further instructed that:

A defendant acts “without lawful authority” not only when he uses a means of identification without the consent or knowledge of its owner but also when he uses a means of identification with the consent or knowledge of its owner in order to commit a crime. One does not have “lawful authority” to consent to an unlawful act. A means of identification need not be illicitly procured for it to be used “without lawful authority.”

The phrase “during and in relation to” means that the name or date of birth of Ramon Rodriguez was used in furtherance of the commission of the crimes charged in Counts 1, 2, 4 or 5 of the Indictment; it must have been used to some purpose or effect with respect to the commission of the crimes charged in Counts 1, 2, 4 or 5 of the Indictment; the presence or involvement of the name or date of birth of Ramon Rodriguez in the commission of the crimes charged in Counts 1, 2, 4 or 5 of the Indictment cannot be the result of accident or coincidence. The name or date of birth of Ramon Rodriguez must facilitate or have the potential to facilitate commission of the crimes charged in Counts 1, 2, 4 or 5 of the Indictment.

INSTRUCTION NO. 22

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done “knowingly” if the defendant is aware of the act and did not act through ignorance, mistake or accident. You may consider the evidence of the defendant’s acts and words, along with all of the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 23

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NO. 24

You have heard testimony about the defendant's character for honesty and law-abidingness. You should consider this testimony together with and in the same way you consider the other evidence.

INSTRUCTION NO. 25

You will note that the Indictment charges that the offenses were committed “on or about” certain dates. The government need not prove with certainty the exact dates or the exact time period of the offenses charged. It is sufficient if the evidence establishes that the offenses occurred within a reasonable time of the dates or period of time alleged in the Indictment.

INSTRUCTION NO. 26

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 27

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because your verdicts—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdicts.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts might be—that is entirely for you to decide.

INSTRUCTION NO. 28

Attached to these instructions you will find the Verdict Forms and Interrogatory Forms. The Verdict Forms and Interrogatory Forms are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms and Interrogatory Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms and Interrogatory Forms to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms and Interrogatory Forms, your foreperson will fill out the Verdict Forms and Interrogatory Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Forms and Interrogatory Forms in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms and Interrogatory Forms in accord with the evidence and these instructions.

Date

August 13, 2013


Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa