

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, - Docket No. 3:06-CR-712
-
Plaintiff, - Toledo, Ohio
- October 29-30, 2007
v. - Trial
-
DAVID GEISEN, et al., -
-
Defendant. -

VOLUME 15 OF 15
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE DAVID A. KATZ
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

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DOCKETED
USNRC

October 23, 2008 (5:00pm)

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9 Proceedings recorded by mechanical stenography,
10 transcript produced by notereading.
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1 (Commenced at 3:43 p.m. on October 29,
09:04:28 2 2007.)

09:04:28 3 THE COURT: As I indicated to you in my
15:43:38 4 previous telephone conversation with each of the sides,
15:43:44 5 the government and the defendants, the following was
15:43:48 6 received approximately an hour ago, maybe a little less:
15:43:56 7 We, the jury, have reached a verdict on Rod Cook. We,
15:44:02 8 the jury, have reached a verdict on Dave Geisen for
15:44:04 9 Count 5, but are unable to come to a unanimous decision
15:44:08 10 on Counts 1 through 4.

15:44:18 11 In discussing the matter with you
15:44:20 12 individually, I pointed out that it was my preference to
15:44:28 13 given an Allen charge. The government then pointed out
15:44:46 14 to me Sixth Circuit pattern instruction 9.03 with
15:44:52 15 respect to partial verdicts, and that gives the jury the
15:45:06 16 option to wait until the end of the deliberations and
15:45:12 17 return all verdicts, or if they choose to return a
15:45:16 18 verdict on some of the charges now, and instruct them
15:45:20 19 that that verdict will be final, they will not be able
15:45:24 20 to change their minds. The committee commentary cites
15:45:42 21 a Sixth Circuit case that included that the -- and it's
15:45:56 22 an old case, 1992, that the jury verdict -- the jury
15:46:00 23 instructions initially talked about partial verdicts, so
15:46:08 24 failure not to give 9.03 later was not error. In the
15:46:16 25 1991 edition, other circuits have recognized that the

15:46:28 1 Court may accept partial verdicts.

15:46:36 2 There are only five circuits that have
15:46:38 3 pattern instructions which include these. This is from
15:46:44 4 the 1991; there may be more now. Two of them include
15:46:54 5 the form of partial verdict instruction in their pattern
15:47:02 6 instructions, general instruction at the end of the
15:47:06 7 trial. The other three included it in a special
15:47:12 8 instruction to be given only after the jury has
15:47:14 9 indicated that it wants to return a partial verdict or
15:47:20 10 after the jury has deliberated for an extensive period
15:47:24 11 of time. The jury in this question, which I read to
15:47:32 12 you, does not say that they want to return that verdict
15:47:36 13 now. I do not believe that it would be error to go
15:47:42 14 either way on this issue.

15:47:46 15 Off the record.

15:47:46 16 (Discussion had off the record.)

15:47:54 17 THE COURT: I presume that Federal Rule of
15:48:02 18 Criminal Procedure 31(b) talks about partial verdicts
15:48:10 19 and uses in both (b)(1) and (b)(2) where there are --
15:48:16 20 one is multiple defendants, two is multiple counts; the
15:48:20 21 word "may" as against "shall." And so it is
15:48:26 22 discretionary with the Court. Gentlemen, I've been
15:48:36 23 thrust into the same thing that was tried before the
15:48:40 24 jury on the difference between should, may, and shall.
15:48:48 25 Preliminarily I have reached this conclusion: And that

15:48:54 1 is not to use Sixth Circuit Pattern Instruction 9.03 at
15:49:02 2 this time because of my fear of the jury being confused.
15:49:10 3 That is because there are five counts as to Mr. Geisen.
15:49:18 4 And thus far, they have indicated they have only
15:49:20 5 resolved on one of those five counts. If we use this
15:49:28 6 charge, 9.03, which is appropriate but not mandatory
15:49:36 7 under 31(b)(1) and (2), they could be confused about not
15:49:46 8 just Mr. Cook -- I mean, not just Mr. Geisen, but Mr.
15:49:52 9 Cook as well. And one of the things, since they are
15:49:58 10 both charged under at least four common counts, one of
15:50:04 11 the things that concerns me is that they will find --
15:50:08 12 that they could, not would, but could find themselves in
15:50:12 13 reviewing the evidence in common discussion after an
15:50:18 14 Allen charge with wanting to change that which they've
15:50:26 15 already decided on either one count or more regarding
15:50:30 16 either one or both of the defendants. And so I think
15:50:36 17 since it's not mandatory, it could be significantly
15:50:44 18 confusing to a jury at this juncture. I'm happy to
15:50:50 19 listen to you with limited time because the jury will
15:50:56 20 probably now wish to go home unless they wish -- and
15:50:58 21 that's their option. I'll hear from the defendant -- I
15:51:10 22 guess I'll hear from the government.

15:51:12 23 MR. POOLE: I was going to say, Your Honor,
15:51:14 24 we called a partial verdicts instruction to the Court's
15:51:20 25 attention, and I understand defense counsel opposes it,

15:51:22 1 and we're all ears. We're interested in hearing what
15:51:26 2 they have to say.

15:51:28 3 MR. HIBEY: Your Honor, the Court's analysis
15:51:32 4 is an apt one and that 904 should be the only
15:51:36 5 instruction given at this time.

15:51:42 6 MR. GORDON: We agree with that, Your Honor.
15:51:44 7 It, if I understand your intention at the moment, is
15:51:48 8 simply to give the 904 charge.

15:51:50 9 THE COURT: Yes. Thank you, Mr. Gordon, Mr.
15:51:52 10 Hibey.

15:51:58 11 MR. POOLE: Your Honor, we're not opposed to
15:52:04 12 what the Court has proposed.

15:52:06 13 THE COURT: Thank you very much. Ready to
15:52:08 14 bring in the jury?

15:52:12 15 MR. HIBEY: Sidebar.

15:52:16 16 THE COURT: Off the record or on the record?

15:52:18 17 MR. HIBEY: No need.

15:52:34 18 (Discussion had off the record between
15:52:36 19 defense attorneys.)

15:52:50 20 THE COURT: I would suggest, ladies and
15:52:52 21 gentlemen who are in the courtroom, that nothing be
15:52:58 22 spoken about the status of the case in the hands of the
15:53:06 23 jury outside of this courtroom. I would impress upon
15:53:14 24 those who are here, other than staff members, please
15:53:20 25 remember that, and that will be emphasized by counsel

15:53:24 1 for both Mr. Cook and Mr. Geisen, the family or friends
15:53:32 2 who are here.

15:53:34 3 Did you have something else, Andy?

15:53:36 4 MR. WISE: No.

15:54:26 5 (Jury enters the courtroom.)

15:54:32 6 THE COURT: Ladies and gentlemen, I received
15:54:34 7 the note from the forelady, and I now intend to give you
15:54:40 8 an additional instruction.

15:54:44 9 I'm going to ask that you return to the jury
15:54:50 10 room and deliberate further. I realize that you are
15:54:54 11 having some difficulty reaching unanimous agreement, but
15:55:00 12 that is not unusual, particularly in a long and complex
15:55:06 13 case as this. And sometimes after further discussion,
15:55:10 14 jurors are able to work out their differences and agree.
15:55:18 15 Please keep in mind how very important it is for you to
15:55:22 16 reach unanimous agreement. If you cannot agree, and if
15:55:26 17 this case is tried again, and the parties are required
15:55:32 18 to endure the mental, emotional, and financial strain of
15:55:36 19 a second trial, there is no reason to believe that any
15:55:40 20 new evidence will be presented or that the next 12
15:55:44 21 jurors will be any more conscientious and impartial than
15:55:48 22 you.

15:55:50 23 Let me remind you of something I told you to
15:55:54 24 in the jury instructions last Wednesday. It is your
15:56:00 25 duty as jurors to talk with each other about the case,

15:56:04 1 to listen carefully and respectfully to each other's
15:56:08 2 views, and to keep an open mind as you listen to what
15:56:12 3 your fellow jurors have to say. And let me remind you
15:56:20 4 that it is your duty to make every reasonable effort you
15:56:24 5 can to reach unanimous agreement.

15:56:28 6 Each of you, whether you are in the majority
15:56:32 7 or in the minority, ought to seriously reconsider your
15:56:34 8 position in light of the fact that other jurors who are
15:56:40 9 just as conscientious and impartial as you are have come
15:56:44 10 to a different conclusion. Those of you who believe
15:56:50 11 that the government has proved a defendant guilty beyond
15:56:54 12 a reasonable doubt should stop and ask yourselves if the
15:56:58 13 evidence is really convincing enough, given that other
15:57:02 14 members of the jury are not convinced. And those of
15:57:08 15 you who believe that the government has not proved a
15:57:10 16 defendant guilty beyond a reasonable doubt should stop
15:57:14 17 and ask yourselves if the doubt you have is a reasonable
15:57:18 18 one, given that other members of the jury do not share
15:57:24 19 your doubt. None of you should hesitate to change your
15:57:30 20 mind if, after reconsidering things, you are convinced
15:57:34 21 that other jurors are right, and that your original
15:57:42 22 position was wrong. But remember this: Do not ever
15:57:48 23 change your mind just because other jurors see things
15:57:52 24 differently or just to get the case over with. As I
15:57:58 25 told you before, in the end, your vote must be exactly

15:58:04 1 that, your own vote. As important as it is for you to
15:58:12 2 reach a unanimous verdict, it is just as important that
15:58:18 3 you do so honestly and in good conscience.

15:58:24 4 What I have just said is not meant to rush
15:58:26 5 or pressure you into agreeing on a verdict. Take as
15:58:32 6 much time as you need to discuss things. There is no
15:58:36 7 hurry. I would now ask that you return to the jury
15:58:42 8 room, resume your deliberations, and determine when you
15:58:48 9 feel it is appropriate for you to leave, and perhaps
15:58:52 10 return tomorrow. That is your decision which should be
15:58:58 11 communicated from your foreperson to Cindy, and she will
15:59:06 12 tell me. Thank you, ladies and gentlemen, for your
15:59:44 13 patience.

15:59:44 14 (Adjourned at 3:59 p.m.)

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14:20:56 1 (Jury enters the courtroom at 2:20 p.m. on
14:20:58 2 October 30, 2007.)

14:20:58 3 THE COURT: Ladies and gentlemen, it's my
14:21:00 4 understanding from Cindy that you have reached a
14:21:02 5 verdict. That apparently being so, would you please
14:21:04 6 pass the envelope holding the verdict forms to Cindy.

14:21:10 7 (Verdict forms given to the Judge.)

14:21:38 8 THE COURT: I'm now, ladies and gentlemen,
14:21:42 9 going to publish the verdict. That merely means that I
14:21:48 10 will announce it in open court and on the record.
14:21:54 11 After I announce the first verdict on Mr. Geisen, I will
14:22:00 12 then immediately announce the second verdict with
14:22:04 13 respect to Mr. Cook. Once I have announced both
14:22:10 14 verdicts, I will poll the jury and ask you as to each of
14:22:16 15 the two verdicts, which the forms of which have been
14:22:22 16 signed by all 12 voting jurors, represents your
14:22:28 17 individual verdict judgment on the matter.

14:22:38 18 I'll first read the general verdict form
14:22:40 19 with respect to Mr. Geisen. In short, the jury has
14:22:48 20 found Mr. Geisen guilty on Counts 1, 3, and 4, and not
14:22:56 21 guilty on Counts 2 and 5. I would prefer to poll the
14:23:06 22 jury after each verdict. I will go down the line,
14:23:14 23 Juror Number 1 sitting here, and Juror Number 7 sitting
14:23:18 24 in the second row.

14:23:20 25 Juror Number 1, does this verdict form

14:23:24 1 reflect your individual judgment and verdict?

14:23:28 2 THE JUROR: Yes, Your Honor.

14:23:28 3 THE COURT: Same question to you, sir?

14:23:30 4 THE JUROR: Yes.

14:23:32 5 THE COURT: And to you?

14:23:32 6 THE JUROR: Yes, Your Honor.

14:23:32 7 THE COURT: And to you?

14:23:34 8 THE JUROR: Yes, Your Honor.

14:23:34 9 THE COURT: And Juror Number 5?

14:23:36 10 THE JUROR: Yes, Your Honor.

14:23:36 11 THE COURT: Juror Number 6?

14:23:38 12 THE JUROR: Yes, Your Honor.

14:23:38 13 THE COURT: And Juror Number 7, does this

14:23:42 14 verdict form reflect your individual judgment and

14:23:46 15 verdict?

14:23:46 16 THE JUROR: Yes, Your Honor.

14:23:46 17 THE COURT: Same question to Number 8?

14:23:50 18 THE JUROR: Yes, Your Honor.

14:23:52 19 THE COURT: Number 9?

14:23:52 20 THE JUROR: Yes, Your Honor.

14:23:54 21 THE COURT: Number 10?

14:23:56 22 THE JUROR: Yes, Your Honor.

14:23:56 23 THE COURT: Number 11?

14:23:58 24 THE JUROR: Yes, Your Honor.

14:23:58 25 THE COURT: Juror Number 12?

14:24:00 1 THE JUROR: Yes, Your Honor.

14:24:02 2 THE COURT: Thank you.

14:24:04 3 With respect to Mr. Cook, the jury has found
14:24:06 4 Mr. Cook not guilty on all four counts in which he has
14:24:10 5 been charged; to wit, Counts 1, 2, 3, and 5. I will now
14:24:18 6 poll the jury.

14:24:20 7 Does the verdict form with respect to Rodney
14:24:22 8 Cook in which you have found him not guilty of all four
14:24:28 9 charges, in which he has been alleged to have been
14:24:30 10 guilty, not guilty, reflect your individual verdict and
14:24:36 11 judgment? Juror Number 1?

14:24:38 12 THE JUROR: Yes, Your Honor.

14:24:38 13 THE COURT: Juror Number 2?

14:24:40 14 THE JUROR: Yes, Your Honor.

14:24:40 15 THE COURT: Juror Number 3?

14:24:42 16 THE JUROR: Yes, Your Honor.

14:24:42 17 THE COURT: Juror Number 4?

14:24:44 18 THE JUROR: Yes, Your Honor.

14:24:44 19 THE COURT: Juror Number 5?

14:24:46 20 THE JUROR: Yes, Your Honor.

14:24:46 21 THE COURT: Juror Number 6?

14:24:48 22 THE JUROR: Yes, Your Honor.

14:24:48 23 THE COURT: Same question, does the verdict
14:24:50 24 form with respect to Mr. Rodney Cook, finding him not
14:24:56 25 guilty on the four counts of the indictment with which

14:25:00 1 he was charged, reflect your individual judgment and
14:25:04 2 verdict? Juror Number 7?

14:25:06 3 THE JUROR: Yes, Your Honor.

14:25:06 4 THE COURT: Number 8?

14:25:06 5 THE JUROR: Yes, Your Honor.

14:25:08 6 THE COURT: Juror Number 9?

14:25:10 7 THE JUROR: Yes, Your Honor.

14:25:10 8 THE COURT: Juror Number 10?

14:25:12 9 THE JUROR: Yes, Your Honor.

14:25:12 10 THE COURT: Juror Number 11?

14:25:14 11 THE JUROR: Yes, Your Honor.

14:25:14 12 THE COURT: And Juror Number 12?

14:25:16 13 THE JUROR: Yes, Your Honor.

14:25:20 14 THE COURT: I want to thank you for your

14:25:22 15 service. I will now order that the verdict form be

14:25:28 16 filed and is accepted and filed, both as to Mr. Geisen

14:25:32 17 and Mr. Cook. I will also discharge you from your

14:25:40 18 duties.

14:25:42 19 I want to, on behalf of the Court and my

14:25:46 20 staff, the government and the defendants, thank you for

14:25:50 21 your devotion to duty that has obviously been displayed

14:26:00 22 by your attentiveness throughout this trial and your

14:26:06 23 ability to continue deliberating over these almost four

14:26:12 24 complete days. I ask you to return to the jury room

14:26:18 25 together with the alternates who are here so that I can

14:26:20 1 come up and thank you personally, number one; and number
14:26:28 2 two, present you with these very frameable certificates
14:26:32 3 from the Court, and some other memorabilia from the
14:26:38 4 Judge. Thank you.

14:27:16 5 (The jury is excused.)

14:27:20 6 THE COURT: Mr. Cook, you are discharged
14:27:22 7 from your bond and are free, when you decide to leave,
14:27:28 8 to leave the Court as having been found not guilty by
14:27:34 9 the jury on all four counts of the indictment in which
14:27:38 10 you were charged. Please be seated.

14:27:42 11 THE DEFENDANT: Thank you.

14:27:42 12 THE COURT: With respect to Mr. Geisen, the
14:27:48 13 matter will be referred to the United States Probation
14:27:50 14 and Pretrial Services Office. They will conduct an
14:28:00 15 investigation and background report and prepare what is
14:28:04 16 called a presentence report, presentence investigation
14:28:10 17 and report. You and counsel and the government will
14:28:16 18 all receive copies of that report which will be mailed
14:28:22 19 to you. You will have an opportunity to comment on it,
14:28:28 20 raise objections to it. The matter will not be set for
14:28:34 21 sentencing before 15 weeks from today at a time which is
14:28:42 22 mutually convenient to the government and the defendants
14:28:44 23 and counsel for the defendant. That will give you the
14:28:50 24 opportunity as well as the government to file objections
14:28:54 25 with the Probation Department and file a sentencing

14:28:58 1 memorandum and objections with the Court.

14:29:06 2 With respect to making arrangements with the
14:29:08 3 probation department, I'd request that counsel contact
14:29:12 4 the probation department before leaving town today since
14:29:16 5 all three, both counsel and Mr. Geisen, reside outside
14:29:24 6 of the area. I will continue his bond on the same
14:29:26 7 terms and conditions as previously established.
14:29:42 8 Anything further from the government?

14:29:44 9 MR. POOLE: No, Your Honor.

14:29:46 10 THE COURT: Thank you. Anything further
14:29:48 11 from the defendant?

14:29:50 12 MR. HIBEY: Your Honor, if you please, we
14:29:52 13 are contemplating filing post-trial motions. Would you
14:29:56 14 give us a date for the filing of post trial motions
14:30:00 15 beyond what the rules provide, which I think is only
14:30:04 16 about seven days.

14:30:04 17 THE COURT: I would think that three
14:30:08 18 weeks --

14:30:10 19 MR. HIBEY: Thank you, Your Honor.

14:30:14 20 THE COURT: And 10 days sufficient for a
14:30:20 21 reply?

14:30:20 22 MR. POOLE: If that proves to be a problem,
14:30:22 23 we'll get back in touch with the Court.

14:30:26 24 THE COURT: Fine. I'm very liberal with
14:30:28 25 those dates. Can I see counsel at sidebar, please.

14:47:18 1 (Discussion had off the record.)

14:47:22 2 (Recess taken.)

14:47:22 3 THE COURT: Ladies and gentlemen, those of
14:47:24 4 you who remain, if the jury decides they wish to speak
14:47:28 5 with counsel for both the government and the defendants,
14:47:32 6 they will do so without either of the defendants in the
14:47:44 7 courtroom and only the attorneys, my staff, and if she
14:47:52 8 wishes to stay for some reason, the court reporter
14:47:58 9 cleaning up matters. But everyone else will have to
14:48:02 10 leave. And the CSO at the back of the room will monitor
14:48:10 11 so that no one enters the courtroom after that
14:48:14 12 discussion begins. I don't know if they decided to
14:48:16 13 come down or not.

14:48:28 14 Ladies and gentlemen, we'd ask that you
14:48:28 15 leave now.

16 (Trial conclude at 2:48 p.m.)

17 - - -

18 C E R T I F I C A T E

19

20 I certify that the foregoing is a correct transcript
21 from the record of proceedings in the above-entitled
22 matter.

23

24

25 _____
Tracy L. Spore, RMR, CRR

Date

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