

United States District Court

FOR THE

UNITED STATES OF AMERICA

v.

Clinton E. Savage and
William Kennedy

No. Hammond Criminal 3285

To John Kusmiz, 4121 Adams, Gary, Indiana

You are hereby commanded to appear in the United States District Court for the Northern
District of Indiana at Federal Building in the city of
Hammond on the 29th day of October 1962 at 10 o'clock A.M. to
testify in the above-entitled case.

This subpoena is issued on application of the defendant

October 23, 1962.

George Cohan
Attorney for defendant
844 Broadway, Gary, Ind.
Address

KENNETH L. LACKEY

Clerk.

By

W. W. Frame
Deputy Clerk.

RETURN

Received this subpoena at _____ on _____
and on _____ at _____ I served it on the
within named _____
by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage
allowed by law.

Service Fees

Travel _____ \$
Services _____ \$
Total _____ \$

By _____

144-26-96
DEPARTMENT OF JUSTICE
FEB 6 1963
FEB 1 1963
FEB 6 1963

* Insert "United States," or "defendant" as the case may be.
* Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825.

United States District Court

FOR THE
HAMMOND DIVISION-NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA

v.

No. Hammond Criminal 3285

CLINTON E. SAVAGE and
WILLIAM KENNEDYTo Sgt. John Kusmics
c/o Gary Police Dept.
Gary, Indiana

You are hereby commanded to appear in the United States District Court for the Northern

District of Indiana at Room 312, Federal Bldg., in the city of
Hammond on the 29th day of October 1962 at 9:00 o'clock A. M. to
testify in the above-entitled case.

This subpoena is issued on application of the United States.

10/22/1962

Alfred V. Moeller, Jr.
Attorney for United States
Fed. Bldg., Hammond, Ind.
Address

KENNETH LACKEY, CLERK

Clerk.

By

Deputy Clerk.

RETURN

Received this subpoena at _____ on _____
and on _____ at _____ I served it on the
within named _____
by delivering a copy to h _____ and tendering* to h _____ the fee for one day's attendance and the mileage
allowed by law.

Service Fees

By _____

Travel _____ \$

Services _____

Total _____ \$

* Insert "United States," or "defendant" as the case may be.

* Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825.

COURT'S INSTRUCTION NO. 1

①

Members of the Jury:

At this time it becomes the duty of the Court to instruct you on the law as it applies to this case.

It will be your duty as jurors to follow the law as the Court states it to you. On the other hand, you must keep in mind that it is the exclusive province of the jury to determine the facts of the case, and for that purpose to consider and weigh the evidence.

COURT'S INSTRUCTION NO. 2

(2)

If, in these instructions, any rule, direction, or idea be stated in varying ways, no emphasis thereon is intended by me and none must be inferred by you. For that reason you are not to single out any certain sentence or any individual point or instruction, and ignore the others, but you are to consider all the instructions, and as a whole, you are to regard each instruction in the light of all the others.

This is a criminal case brought by the United States of America by way of Grand Jury Indictment returned in this Court on May 3, 1962.

The indictment is drawn in one count and charges, in the words of the Indictment: That on or about the 20th day of November, 1961, in the Northern District of Indiana, at Gary, Indiana, the defendants, CLINTON E. SAVAGE and WILLIAM KENNEDY, detectives of the City of Gary, Indiana, Police Department, acting under color of the laws of the State of Indiana, did wilfully and unlawfully assault, strike and beat James Lee Anderson, an inhabitant of the State of Indiana, with the intent and purpose of inflicting summary punishment upon him, and of coercing a confession from him, and did thereby deprive James Lee Anderson of rights, privileges and immunities protected by the Constitution and laws of the United States, to wit, the right not to be deprived of liberty without due process of law and the right and privilege to be immune from summary punishment by persons acting under color of law, in violation of Section 242, Title 18 of the United States Code.

3A

Section 242 of Title 18 of the United States
Code provides insofar as it is applicable here that:

"Whoever, under color of any law,
statute, ordinance, regulation or custom,
willfully subjects any inhabitant of any
State, Territory, or District to the
deprivation of any rights, privileges, or
immunities secured or protected by the
Constitution or laws of the United States,
* * * shall be * * * guilty of an offense
against the laws of the United States."

COURT'S INSTRUCTION NO. 4

(4)

That is an explanation of the nature of the charges against the defendants. I instruct you that the **Indictment** is not a part of the evidence in the case, and is not evidence, even in the slightest degree, of the guilt of the defendants, or of what is averred against him. The **Indictment** is merely the formal way in which the Government presents its case for trial.

(5)

The defendants have entered a plea of not guilty to the indictment, and to the crime charged therein. Upon the issues thus joined, the burden is upon the government to prove, beyond a reasonable doubt, the guilt of the defendants as to the crime charged in the indictment. The government must prove beyond a reasonable doubt, before a verdict of guilty can be returned, with respect to the crime charged, all of the essential elements of such crime. If the government does not discharge its duty or burden, with respect to the crime charged, in its essential ingredients, then it will be your duty to find the defendants not guilty. On the other hand, if the government has discharged its duty or burden with respect to the crime charged, in its essential ingredients, then it will be your duty to find the defendants guilty.

(6)

Four essential elements are required to be proved in order to establish the offense charged in the Indictment:

beyond a
reasonable
doubt

First: That the defendants were acting under color of law.

Second: That the person upon whom the acts were committed was a subject or inhabitant of a state, territory or district of the United States.

Third: The act or acts were done willfully; and

Fourth: That the act or acts were done in deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(7)

GOVERNMENT'S REQUESTED INSTRUCTION No. 1

The term "color of law" includes a misuse of power, possessed by virtue of the State law, and made possible only because the wrongdoer is clothed with the authority of state law.

See: United States v. Classic, 313 U.S. 299, 326.
Williams v. United States, 341 U.S. 97.

- 5 -

GOVERNMENT'S PROPOSED INSTRUCTION NO. 2

(8)

In this case the defendants are charged with having deprived James Lee Anderson of his liberty without due process of law. Liberty is a right which is protected by the Constitution of the United States and includes the right to personal security, It also includes the right not to be compelled, by force, violence, threats or intimidation, to confess to a crime.

Lynch v. United States, 189 F.2d 746, 479.
Williams v. United States, 341 U.S. 97,
101-2.

GOVERNMENT'S REQUESTED INSTRUCTION NO. 3

9

Summary punishment may be defined as the imposition, by one acting under color of law, of punishment in a manner or degree not authorized by law, statute or regulation.

x

GOVERNMENT'S REQUESTED INSTRUCTION NO. 4

10

+
X

You are instructed that an officer of the law is presumed to know that a person arrested by him for an offense has the constitutional right to a trial under the law, and if you believe from the evidence beyond a reasonable doubt that the defendants wilfully failed to accord to victim the opportunity for such a trial but substituted instead their own trial by ordeal, you will be justified in finding that such a denial of such constitutional right was consciously and wilfully made. One is generally presumed to have intended the normal and reasonable consequences of his acts.

Crews v. United States, 160 F. 2d 746, 750.

(11)

An act is done wilfully if done voluntarily and purposefully and with the specific intent to do that which the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

In this case it means a purpose to deprive the prisoner of a constitutional right, i.e., the right to be tried by a court rather than by ordeal.

+
X In determining whether that requisite bad purpose was present you are entitled to consider all the attendant circumstances, the weapons used in the assault, if any, the character and duration of the assault, the relative positions of the parties, and the like.

Screws v. United States, 325 U.S. 91, 101 107.
Morissette v. United States, 342 U.S. 246,
250, 252.

If you conclude beyond a reasonable doubt that the defendants wilfully intended to subject James Lee Anderson to summary punishment, as I have defined that term for you, or if you conclude beyond a reasonable doubt that they wilfully sought by violence to compel or coerce James Lee Anderson to confess to a crime, then you must also conclude that the defendants intended to deprive James Lee Anderson of his constitutional right not to be deprived of liberty without due process of law.

Defendant's INSTRUCTION NO. 116

Given
13

The jury is instructed that if you find from the evidence that the said James Lee Anderson was arrested on the 15th day of November, 1961, and charged with the crimes of robbery and rape by two other police officers of the City of Gary, not the defendants herein, that the said James Lee Anderson was held in the Gary City Jail for questioning of other alleged crimes committed in the vicinity of Gary, Indiana. That the said James Lee Anderson was lawfully under arrest at said time and was not being held in the Gary City Jail in violation of the due process of law clause of our Constitution and the fact that he was under arrest charged as aforesaid is not to be considered by the jury that he was by the fact of being held in the Gary City Jail subjected to summary punishment or deprived of his immunities guaranteed to him by the Constitution and the law of the United States.

Given
as modified
(14)

Defendant's INSTRUCTION NO. 17

You are instructed that as police officers of the City of Gary, Indiana, the said defendants had their duty and the right to investigate the commission of a crime against the State of Indiana, and that as such police officers they were within their rights to take the said James Lee Anderson out of the Gary City Jail to the scene of an alleged crime to question him as to whether or not he committed said crime and the fact that said police officers acted under their duty and right took said James Lee Anderson from the Gary City Jail to the scene of an alleged crime for questioning is not to be considered ^{as} by the jury as an invasion of the said James Lee Anderson's Constitutional rights or as an attempt to commit summary punishment upon him ^{or} not to deprive him of his liberties ¹ without due process of law.

Defendant's INSTRUCTION NO. 20

(15)
Given as modified

You are further instructed if you find it to be a fact arising from all of the evidence in this case that the said James Lee Anderson was struck or pushed or touched by the said defendants either acting independently or jointly but that said touching or striking or pushing was not done with the intent or purpose ~~to~~ ~~willfully deprive said James Lee Anderson of his liberties without due process of law~~ or to coerce a confession from him and was not done intentionally and wilfully to deprive said James Lee Anderson of the rights and privileges guaranteed to him by the Constitution of the United States to be immune from summary punishment, then in that event you will find the defendants not guilty.

to willfully
inflict
summary
punishment

Defendants

INSTRUCTION

23

Given as modified

(16)

The Court instructs the jury that the defendant Clinton E. Savage, and the defendant William Kennedy, are both jointly charged with the commission of wilful and intentional acts to-wit: unlawfully assaulting, striking and beating one James Lee Anderson with the intent and purpose of inflicting summary punishment upon the said James Lee Anderson and in ~~co~~ercoing a confession from him thereby depriving the said James Lee Anderson of rights, and immunities protected by the Constitution and laws of the United States to-wit: the right not to be deprived of liberty without due process of law and the right and privilege to be immune from summary punishment by persons acting under the color of law.

You are instructed that each defendant stands before the Court as an individual and before you can find either of the defendants guilty as charged in the indictment you must find that each defendant acting independently or in conjunction with the other defendant did intentionally and wilfully commit the acts described in the indictment with the wilful and intentional purpose of inflicting summary punishment upon said James Lee Anderson and with the further wilful and intentional purpose of depriving said James Lee Anderson of immunities protected by the Constitution and the laws of the United States.

COURT'S INSTRUCTION NO. 7

(17)

Even though the evidence should show and you
should believe that the defendant^{are} ~~is~~ guilty of some crime
other than that specifically charged in the indictment,
that should not influence your decision in any way. You
must confine your consideration to the offenses charged
in this indictment.

COURT'S INSTRUCTION NO. 8

(18)

As I have instructed you, the Government in this case has the burden of proof, and to sustain this burden, must prove its case with regard to the indictment beyond a reasonable doubt. There is no burden on the defendant to introduce any evidence or, having introduced evidence, to convince you thereby of any fact which, if true, would be a defense to the indictment. It is sufficient for a verdict of not guilty if, from all the evidence or the want of evidence, a reasonable doubt exists in your minds as to the guilt of the defendant in respect to such count.

17

The rule of law defining reasonable doubt is a practical rule, intended to guide practical jurors when engaged in the serious and important duty of administering justice. It is not every doubt, however, that is a reasonable one. You are not warranted in considering as reasonable those doubts that may be merely speculative or products of the imagination. A reasonable doubt arises, or exists in the mind, naturally, as a result of the evidence or lack of evidence. There is nothing in it that is mysterious or fanciful. It does not furnish a shield for those actually guilty whereby to escape merited punishment. It does not contemplate absolute or mathematical certainty. Despite every precaution that may be taken to prevent it, there may be in all matters depending on human testimony for proof, a mere possibility of error. But in this case, if you are so convinced by the evidence (considering all the facts and circumstances in evidence as a whole) of the guilt of this defendant as charged, that as prudent jurors you would feel safe to act upon such conviction in matters of highest concern to your own dearest and most important interests, under circumstances where there was no compulsion or coercion upon you to act at all, then you will have attained such a degree of certainty as excludes reasonable doubt and authorizes conviction.

COURT'S INSTRUCTION NO. 12

20

The guilt of the accused is not to be inferred because the facts proved are consistent with ^{their} ~~his~~ guilt, but, on the contrary, before there can be a verdict of guilty you must believe from all the evidence and beyond a reasonable doubt that the facts proved are inconsistent with his innocence. If two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt, you should adopt the former.

COURT'S INSTRUCTION NO.

13

(21)

There are certain other general principles governing the manner in which you should approach your duties in this case which I should like to mention to you at this time.

COURT'S INSTRUCTION NO.

9

22

1 A defendant in a criminal case is presumed to be innocent. It is your duty to give such a defendant the benefit of this presumption throughout the trial until evidence is produced before you that convicts you, beyond a reasonable doubt, of guilt.

COURT'S INSTRUCTION NO. 14

23

I instruct you that while it is the duty and the right of counsel to address you and to explain the testimony to enable you better to understand the questions which you are to decide, yet if counsel inadvertently mistake the law or misstate the evidence, you will follow the law as given to you by the Court in these instructions and not as stated by counsel, and you will take the evidence detailed by the witnesses and shown by the documents introduced instead of the statements of counsel.

INSTRUCTION NO. 15

24

During the progress of the trial questions have been propounded to certain witnesses which the Court did not allow such witnesses to answer. In the consideration of the cause you will disregard such questions and everything contained in them and confine yourselves to a consideration only of the evidence before you. An unanswered question is of no value for any purpose and must be disregarded by you.

During the trial answers of certain witnesses were, upon motion, stricken out by the Court. In the consideration of the cause you will disregard such answers, so stricken from the record, and give all matters stricken from the record no consideration whatever in forming your verdict.

25

In this case you are the sole and exclusive judges of all the questions of fact and proof and it is your exclusive right to determine what facts have or have not been proven in this case. You are also the exclusive judges of the weight of the evidence and have the exclusive right to determine what reasonable inference and conclusions, if any, should be drawn therefrom.

You are likewise the exclusive judges of the credibility of the witnesses. If you cannot reconcile the statements of witnesses on account of contradictions, then you have a right to believe the witness or witnesses you deem most worthy of credit. In determining whom you will believe you may consider the nature of the evidence given by them, their interest, bias or prejudice, if any, disclosed; their opportunity for knowing the facts about which they testify; their manner and deportment while on the witness stand; how far they are corroborated or contradicted by other testimony, and, in weighing the testimony and determining the credibility of the witnesses, it is proper for you to take into consideration all the surrounding circumstances of the witnesses as brought out in evidence; their interest, if any, in the result of the action, and such other facts, appearing in the evidence, as will, in your opinion, aid you in determining whom you will believe; and you may also, in considering whom you will or will not believe, take into account your experience and relations with mankind.

However, it is the province of the Court to determine the law and you are to be governed by the law as given to you by the Court. You must not permit sympathy, prejudice or other emotion to sway you from your sworn duty, but, upon the facts as you find them to be from the evidence and the law as given

Five *EG*
Defendant's INSTRUCTION NO. 15

The defendants are competent witnesses to testify in their own behalf and in this case the defendants have testified as witnesses and the jury has no right to discredit or disregard their testimony merely because they are witnesses in the case, and the defendants in the case, and interested witnesses, but it is your duty to consider and weigh their testimony in the same manner as that of any other witness, having a like degree of interest in the case, and give it such credit as you shall find it entitled to.

I want to impress upon you that you, the jury, are the sole judges of the facts from all the evidence.

I, as presiding Judge, am charged with the duty of directing the trial along paths of recognized procedure.

In executing my duty, I may have said or done things during the course of this trial that some of you might interpret as my views of the weight of the evidence or credibility of the witnesses, if I were deciding the case. I request you disregard such a conclusion as I intended only to decide questions of law and handle the procedure of the trial.

If I saw fit in some instances to ask questions of any witness, this must not influence you, but such witness and evidence must be considered by you like all other witnesses and evidence. Such conduct on my part does not indicate in any way that I have any opinion one way or the other as to issues, facts or credibility of the witness. What the weight of evidence is and the credit or belief is, to be given to each and all witnesses must be determined by you and you alone.

If I have said or done anything which has suggested to you that I am inclined to favor the claims of or positions of either side, you will not suffer yourselves to be influenced by any such suggestion. I have not expressed, nor have I intended to express, any opinion as to what witnesses are or are not worthy of credence, or what inference or inferences should be drawn from the evidence adduced in this case.

I instruct you that in your consideration of this case, you are to disregard any information about the case which may have been received from sources outside of this trial. If any of you have read any newspaper articles or heard any radio broadcasts or telecasts relative to this case, I want to caution you particularly that you are to put any such information entirely out of your consideration of this case, and you are to confine your consideration solely to the evidence adduced in this trial.

COURT'S INSTRUCTION NO. 19

29

I instruct you that the matter of the punishment to be inflicted, if a verdict of guilty is reached, is not before you, the jury, but that this is a matter for the Court to determine or fix. The only matter before you is the question of whether or not the defendant is guilty or innocent of the crimes charged in the indictment.

When you retire to deliberate upon this case, each juror should exercise his individual judgment, so that when a verdict is agreed upon it will constitute the verdict of each individual juror.

In arriving at a verdict, each juror should give due consideration to the views and opinions of the other jurors, and should listen to their arguments with a willingness to be convinced and to yield to their views, if induced to believe them to be correct; but no juror should agree upon a verdict unless he is convinced that the same is correct, and such as his conscience approves, and such as each juror under his oath, after full consideration, believes to be right.

COURT'S INSTRUCTION NO.

21

(31)

You were accepted as jurors on the basis of the answers made when you were questioned as to your qualifications. The answers you then made to said questions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion and sympathy are as binding on you now as they were then and should remain so until you are finally discharged from further consideration of this case.

(Explain forms of verdict.)

When you go to your jury room, elect one of your number as foreman.

When you have arrived at your verdict, have the foreman sign it, and notify the bailiff in whose charge you will be.

Order in Which Instructions Shall be Given

C-1 - 1	C-12 - 20
C-2 - 2	C-13 - 21
C-3 - 3	C-9 - 22
C-3A - 4 3A	C-14 - 23
C-4 - 4	C-15 - 24
C-5 - 5	C-16 - 25
C-6, as modified	D-15 - 26
G-1 - 7	C-17 - 27
G-2 - 8	C-18 - 28
G-3 - 9	C-19 - 29
G-4 - 10	C-20 - 30
G-5 - 11	C-21 - 31
G-6 - 12	C-22 - 32
D-16 - 13	
D-17 - merged - 14	
D-20, merged - 15	
D-23 - merged - 16	
C-7 - 17	
C-8 - 18	
C-11 - 19	

LEGEND

C - Court's Instruction
 G - Government's Instruction
 D - Defendant's Instruction

144-26-66 F.R.S.

File 144-26-96

Instructions given by the Court in U.S. v. Savage, et al., Northern District of Indiana, Hammond Division, October 31, 1962.

FILE - GWJ

144-26-96	
11	NOV 1 1962

ARKANSAS GAZETTE
NOVEMBER 2, 1962

File
44-26-96
CWS

Officers Convicted Of Rights Counts

Hammond, Ind., Nov. 1 (AP). — Two Gary Negro police detectives were convicted in federal court today of violating the civil rights of a Negro prisoner who charged he was beaten by the officers.

The convicted men are Detective Capt. Clinton Savage, 47, and Detective William Kennedy, 44, veterans of 18 and 15 years, respectively, on the Gary force.

A jury of 12 women and two men convicted them of violating the civil rights of James L. Anderson, 35, of Gary on November 20, 1961, when Anderson was in jail on charges of robbery and rape.

Anderson subsequently pleaded guilty in Lake Criminal Court to the robbery charge and was sentenced to 18 years in the state penitentiary. The rape charge was dismissed.

Judge George N. Beamer ordered a pre-sentence investigation. The conviction carries a maximum penalty of a year in prison and \$1,000 fine for each defendant.

By The Associated Press

FILE - GWJ

44-26-96
NOV 20 1962