

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

GHISLAINE MAXWELL,

Defendant.

INSTRUCTIONS TO FOCUS GROUP

Summary of Indictment

The Indictment contains three counts, or “charges,” against GHISLAINE MAXWELL, the defendant.

Count One of the Indictment charges the defendant, with conspiring—that is, agreeing—with others to transport a minor in interstate and foreign commerce, with intent that the minor engage in sexual activity for which a person can be charged with a criminal offense. Count One relates to multiple minor victims during the time period 1994 to 2004.

Count Two of the Indictment charges the defendant with conspiring to engage in sex trafficking of minors. Count Two relates to multiple minor victims during the time period 2001 to 2004.

Count Three of the Indictment charges the defendant with sex trafficking of minors. Count Three relates to Minor Victim-4, during the time period 2001 to 2004.

Burden of Proof and Multiple Counts

In a moment, I will describe those three counts in more detail. Before I do, however, let me explain that the Government has the burden of proving the defendant's guilt on each count by a preponderance of the evidence. That means that the Government must show that it is more likely than not that the defendant is guilty of each count.

You must consider each count separately and return a separate verdict of guilty or not guilty for each. Whether you find the defendant guilty or not guilty as to one offense should not affect your verdict as to any other offense charged.

You have no doubt heard that a defendant's guilt in a criminal case must be proved beyond a reasonable doubt. That is not the standard we are applying in today's exercise. As I said, the question for you today is whether it is more likely than not that the defendant is guilty of each count.

Count One: Conspiracy to Transport Minors

As I mentioned, Count One of the Indictment charges the defendant with conspiracy to transport minors between 1994 and 2004.

In order to satisfy its burden of proof with respect to the allegation of conspiracy, the Government must establish each of the following elements:

First, the existence of the conspiracy charged in the Indictment; that is, as to Count One, a conspiracy to transport a minor with intent that the minor engage in sexual activity for which a person can be charged with a criminal offense. You should know that a conspiracy just means that the defendant you are considering agreed with at least one other person to violate the law.

Second, that the defendant intentionally and knowingly became a member of the conspiracy. That is, she knowingly participated in the conspiracy with knowledge of its object and with an intent to further the aims of the conspiracy. The defendant's mere presence at the scene of the alleged crime does not, by itself, make her a member of the conspiracy. Similarly, mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. In other words, knowledge without agreement and participation is not sufficient. On the other hand, it is not necessary for the Government to show that a defendant was fully informed as to all the details of the conspiracy in order for you to infer knowledge on her part, and it does not matter whether the defendant's role in the conspiracy may have been more limited than or different in nature or in length of time from the roles of her co-conspirators, provided she was herself a participant.

With respect to Count One, in order to sustain the charge that the defendant conspired to transport an individual with intent that the person engage in sexual activity for which a person can be charged with a criminal offense, the Government must prove that the purpose of the conspiracy was to transport an individual with intent that the individual engage in sexual activity for which a

person can be charged with a criminal offense, which contains three elements:

First, that the defendant knowingly transported an individual in interstate or foreign commerce. This means that the Government must prove that the defendant knew both that she was causing the individual to be transported, and that the individual was being transported in interstate commerce. The Government does not have to prove that the defendant personally transported the individual across a state line or international border. It is sufficient to satisfy this element that the defendant acted through an agent or was engaged in the making of the travel arrangements, such as by purchasing tickets necessary for the individual to travel as planned.

Second, that the defendant transported the individual with the intent that the individual engage in any sexual activity for which any person can be charged with a criminal offense. Count One alleges sexual activity for which a person could be charged with a crime under the criminal law of New York. Specifically, a person commits sexual abuse of a minor in the third degree when he or she subjects another person to sexual contact without the latter's consent. Under New York law, "sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of gratifying the sexual desire of either party. Also under New York law, a person less than seventeen years old is incapable of consent.

Third, the individual must be less than seventeen years old, and the defendant must know that the individual is less than seventeen years old.

It is not a defense to the crime of sexual abuse of a minor in the third degree that the minor voluntarily participated or consented.

Count Two: Conspiracy to Commit Sex Trafficking

Count Two charges the defendant with conspiracy to commit sex trafficking between 2001 and 2004.

As with Count One, in order to satisfy its burden of proof with respect to the allegation of conspiracy, the Government must establish the following elements:

First, the existence of the conspiracy charged in the Indictment; that is, as to Count Two, a conspiracy to commit sex trafficking.

Second, that the defendant intentionally and knowingly became a member of the conspiracy. That is, she knowingly participated in the conspiracy with knowledge of its object and with an intent to further the aims of the conspiracy.

With respect to Count Two, in order to sustain the charge that the defendant conspired to commit sex trafficking, the Government must prove by a preponderance of the evidence that the purpose of the conspiracy was to commit sex trafficking, which contains four elements:

First: The defendant knowingly recruited, enticed, harbored, transported, provided, or obtained a person. Those terms have their ordinary, everyday meanings.

Second: The defendant knew that the person was under the age of eighteen years.

Third: The defendant knew the person would be caused to engage in a commercial sex act. The term “commercial sex act” means “any sex act, on account of which anything of value is given to or received by any person.” The thing of value may be money or any other tangible or intangible thing of value that may be given to or received by any person, regardless of whether the person who receives it is the person performing the commercial sex act. It is not required that the person actually have performed a commercial sex act, and it is not a defense that the person consented.

Fourth: The defendant’s acts were in or affecting interstate commerce. I instruct you

that acts and transactions that cross state lines, or which affect the flow of money in the stream of commerce to any degree, however minimal, are acts and transactions affecting interstate commerce. For instance, it affects interstate commerce to use products that traveled in interstate commerce. Proof of actual travel is not required.

Count Three: Sex Trafficking of Minor Victim-4

Count Three charges the defendant with the sex trafficking of Minor Victim-4 between 2001 and 2004. I have just reviewed the four elements of sex trafficking with you. In order to satisfy its burden of proof with respect to Count Three, the Government must establish by a preponderance of the evidence that the defendant committed those elements in the sex trafficking of Minor Victim-4.

In addition, you may find the defendant guilty of Count Three under a theory of liability called “aiding and abetting,” which permits a defendant to be convicted of a specified crime if the defendant, while not herself committing the crime, assisted another person or persons in committing the crime. To aid or abet another to commit a crime, it is necessary that the Government prove that the defendant willfully and knowingly associated herself in some way with the crime committed by the other person and willfully and knowingly sought by some act to help the crime succeed.