

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA)

)

v.)

)

Cause Number: 2:07 CR 47

DEMOND HARDIMON and)

TARIQ WILSON)

FINAL JURY INSTRUCTIONS

Dated: March 11, 2008

s/ Philip P. Simon
Philip P. Simon, Judge
United States District Court

INSTRUCTION NO. 1

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.

INSTRUCTION NO. 2

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 or that a person would have given certain testimony.

INSTRUCTION NO. 3

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.

INSTRUCTION NO. 4

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 whether the defendant is guilty or not guilty. 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.

INSTRUCTION NO. 5

Certain things are not evidence. I will list them for you:

First, testimony that I struck from the record, or that I told you to disregard, is 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. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way 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.

INSTRUCTION NO. 6

It is proper for an attorney to interview any witness in preparation for trial.

INSTRUCTION NO. 7

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.

INSTRUCTION NO. 8

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

The defendants, Demond Hardimon and Tariq Wilson, are each charged in Count One of the Superseding Indictment with the offense of conspiracy to distribute one (1) kilogram or more of a mixture and substance containing a detectable amount of heroin.

The defendants, Demond Hardimon and Tariq Wilson, have pleaded not guilty to the charges.

INSTRUCTION NO. 9

The defendants are presumed to be innocent 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 defendants are guilty as charged. The government has the burden of proving the guilt of the defendants beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. The defendants are never required to prove their innocence or to produce any evidence at all.

INSTRUCTION NO. 10

Each defendant has an absolute right not to testify. The fact that a defendant did not testify should not be considered by you in any way in arriving at your verdict.

INSTRUCTION NO. 11

You have received evidence of a statement said to be made by the defendant Demond Hardimon to law enforcement officers. 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 statement, including those concerning the defendant himself and the circumstances under which the statement was made.

You may not consider this statement as evidence against any defendant other than the one who made it.

INSTRUCTION NO. 12

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's qualifications, and all of the other evidence in the case.

INSTRUCTION NO. 13

You have heard testimony of an identification of a person. Identification testimony is an expression of belief or impression by the witness. You should consider whether, or to what extent, the witness had the ability and the opportunity to observe the person at the time of the offense and to make a reliable identification later. You should also consider the circumstances under which the witness later made the identification.

The government has the burden of proving beyond a reasonable doubt that the defendant was the person who committed the crime charged.

INSTRUCTION NO. 14

You have heard evidence that before the trial one or more witnesses made statements that may be inconsistent with the witnesses' testimony here in court. Generally, if you find that a witness's earlier statements are inconsistent with his or her testimony, you may consider the earlier statements only in deciding the truthfulness and accuracy of the witness's testimony in this trial. You may not use them as evidence of the truth of the matters contained in the prior statements. However, if that prior statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement.

INSTRUCTION NO. 15

You have heard evidence that certain witnesses have been convicted of a crime. You may consider this evidence only in deciding whether their testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

INSTRUCTION NO. 16

You have heard testimony from Jacqueline Hernandez, James Brown, Matthew Bishop, Amber Shultz, Andrew Foster, Kurt Dryer and Anthony Cardwell, who have pleaded guilty to an offense arising out of the same occurrence for which the defendants are now on trial. In addition, some of these individuals have received benefits from the government in connection with this case, namely a promise to ask the court for a lower sentence. Their guilty pleas are not to be considered as evidence against the defendants.

You may give their testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

INSTRUCTION NO. 17

Even though the defendants are being tried together, you must give each of them separate consideration. In doing this, you must analyze what the evidence shows about each defendant, leaving out of consideration any evidence that was admitted solely against the other defendant. Each defendant is entitled to have his case decided on the evidence and the law that applies to that defendant.

INSTRUCTION NO. 18

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.

INSTRUCTION NO. 19

A conspiracy is an agreement between two or more persons to accomplish an unlawful purpose. To sustain the charge of conspiracy, the government must prove:

First, that the conspiracy to distribute heroin as charged in Count One existed; and

Second, that the defendants knowingly became members of the conspiracy with an intention to further the conspiracy.

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 of the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

A conspiracy may be established even if its purpose was not accomplished.

To be a member of the conspiracy, the defendant need not join at the beginning or know all the other members or the means by which its purpose was to be accomplished. The government must prove beyond a reasonable doubt that the defendant was aware of the common purpose and was a willing participant.

INSTRUCTION NO. 20

The existence of a simple buyer-seller relationship between a defendant and another person, without more, is not sufficient to establish a conspiracy. The government must provide proof of an agreement to commit a crime other than the crime that consists of the sale itself. In other words, an agreement on the one side to sell and on the other to buy does not constitute a conspiracy even if the buyer intends to resell the drugs, so long as the buyer and seller do not have an agreement to further distribute the drugs.

Nonetheless, a conspiracy can consist of an implicit understanding between the parties regarding the subsequent resale of drugs. Such an understanding may be inferred from the course of dealing between two parties.

In considering whether a conspiracy or a simple buyer-seller relationship existed, you should consider all of the evidence, including the following factors:

- (1) Whether the transaction involved large quantities of heroin;
- (2) Whether the parties had a standardized way of doing business over time;
- (3) Whether the sales were on credit or on consignment;
- (4) Whether the parties had a continuing relationship;
- (5) Whether the seller had a financial stake in a resale by the buyer;
- (6) Whether the parties had an understanding that the heroin would be resold.

No single factor necessarily indicates by itself that a defendant was or was not engaged in a simple buyer-seller relationship.

INSTRUCTION NO. 21

The defendants contend that the government's evidence fails to prove the existence of a single overall conspiracy. Rather, the defendants argue that there were actually several separate and independent series of events involving various individuals and various goals, and that none of these series of events is within or is part of the overall conspiracy described in the Superseding Indictment.

Whether there was one conspiracy, two conspiracies, multiple conspiracies or no conspiracy at all is a fact for you to determine in accordance with these instructions. Separate agreements may form the basis for a single ongoing conspiracy if the parties to such agreements are joined by their knowledge of the conspiracy's common goal.

If you find that there was one overall conspiracy as alleged in Count One, and if you find beyond a reasonable doubt that a particular defendant was a member of that conspiracy, you should find that defendant guilty of Count One.

If you find that there were two or more conspiracies, you may find a particular defendant guilty of Count One only if you find beyond a reasonable doubt that he participated in one of the conspiracies that were proven, and that this proven conspiracy was included within the conspiracy alleged in Count One. If, on the other hand, you find that the proven conspiracy is not included within the scope of the conspiracy alleged in Count One, you should find that defendant not guilty of Count One.

INSTRUCTION NO. 22

When the word “knowingly” or the phrase “the defendant knew” 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.

INSTRUCTION NO. 23

You are instructed that heroin is a controlled substance.

INSTRUCTION NO. 24

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.

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in, date, and sign the appropriate form as to each count.

INSTRUCTION NO. 25

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.

INSTRUCTION NO. 26

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.