

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No: 2:09 CR 32 PPS
)	
NATHANIEL JORDAN and)	
SCOTT ADKINS)	

JURY INSTRUCTIONS

Date: February 16, 2010

s/ Philip P. Simon
PHILIP P. SIMON, CHIEF 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 all sides that certain facts are true.

INSTRUCTION NO. 3

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness's intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

You should judge the defendant's testimony in the same way that you judge the testimony of any other witness.

INSTRUCTION NO. 4

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. 5

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. 6

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

First, testimony and exhibits that I struck from the record, or that I told you to disregard, are 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. 7

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

INSTRUCTION NO. 8

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. 9

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

The defendants, Nathaniel Jordan and Scott Adkins, are each charged in Count One of the Superseding Indictment with the offense of attempting to knowingly and intentionally possess with intent to distribute one hundred (100) grams or more of heroin. The defendant, Scott Adkins, is charged in Count Two of the Superseding Indictment with the offense of knowingly possessing a firearm after having been convicted of a prior felony offense.

The defendants, Nathaniel Jordan and Scott Adkins, have pleaded not guilty to the charges.

INSTRUCTION NO. 10

The defendants are presumed to be innocent of each 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. 11

A 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.

INSTRUCTIONS NO. 12

You have received evidence of statements said to be made by the defendants, Nathaniel Jordan and Scott Adkins. You must decide whether the defendants did in fact make the statements. If you find that either defendant did make a 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 the statements as evidence against any defendant other than the one who made it.

INSTRUCTION NO. 13

You have heard evidence of acts of the defendants other than those charged in the Superseding Indictment. You may consider this evidence only on the question of intent and knowledge. You should consider this evidence only for this limited purpose.

INSTRUCTION NO. 14

You have heard evidence that Nathaniel Jordan has been convicted of a crime. You may consider this evidence only in deciding whether Nathaniel Jordan's testimony is truthful in whole, in part, or not at all. You may not consider it for any other purpose. A conviction of another crime is not evidence of Nathaniel Jordan's guilt of the crime for which he is now charged.

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

INSTRUCTION NO. 16

You have heard evidence that before the trial witnesses made statements that may be inconsistent with the witnesses's testimony here in court. If you find that it is inconsistent, you may consider the earlier statement only in deciding the truthfulness and accuracy of that witness's testimony in this trial. You may not use it as evidence of the truth of the matters contained in that prior statement.

INSTRUCTION NO. 17

A statement made by a defendant before trial that is inconsistent with the defendant's testimony here in court may be used by you as evidence of the truth of the matters contained in it, and also in deciding the truthfulness and accuracy of that defendant's testimony in this trial.

INSTRUCTION NO. 18

You have heard evidence that Mitchell Stroud and Eric Dickerson have been convicted of a crime. You may consider this evidence only in deciding whether Mitchell Stroud's and Eric Dickerson's testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

INSTRUCTION NO. 19

You have heard reputation evidence about the character trait of Mitchell Stroud for untruthfulness. You should consider this evidence in deciding the weight that you will give to Mitchell Stroud's testimony.

INSTRUCTION NO. 20

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, as to each count, 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. 21

To sustain the charge of attempted possession of heroin with intent to distribute, as charged in Count 1 of the Superseding Indictment, the government must prove the following propositions:

First, the defendants attempted to knowingly or intentionally possess heroin; and

Second, the defendants attempted to possess heroin with the intent to deliver it to another person.

It does not matter whether the defendants knew the substance was heroin. It is sufficient that the defendant knew that it was some kind of prohibited drug.

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 defendants guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendants not guilty.

INSTRUCTION NO. 22

When the word “knowingly” 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

To “attempt” means that the defendant knowingly took a substantial step toward the commission of the offense with the intent to commit that offense.

INSTRUCTION NO. 24

Possession of an object is the ability to control it. Possession may exist even when a person is not in physical contact with the object, but knowingly has the power and intention to exercise direction and control over it, either directly or through others.

INSTRUCTION NO. 25

You are instructed that heroin is a controlled substance.

INSTRUCTION NO. 26

To sustain the charge against Scott Adkins of possessing a firearm after having been convicted of a crime punishable by a term of imprisonment of more than one year, as charged in Count 2 of the Superseding Indictment, the government must prove the following propositions:

First, that prior to January 29, 2009, the defendant had been convicted of a crime that was punishable by a term of imprisonment of more than one year;

Second, that on or about January 29, 2009, the defendant knowingly possessed a firearm;
and

Third, that the firearm possessed by the defendant had traveled in interstate commerce prior to the defendant's possession of it on or about that date.

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

INSTRUCTION NO. 27

The term “firearm” means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.

INSTRUCTION NO. 28

The Superseding Indictment charges that the offenses were committed “on or about” January 29, 2009. The government must prove that the offenses happened reasonably close to that date but is not required to prove that the alleged offenses happened on that exact date.

INSTRUCTION NO. 29

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. 30

A defendant's presence at the scene of a crime and knowledge that a crime is being committed is not alone sufficient to establish the defendant's guilt.

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.

[Forms of verdict read.]

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

INSTRUCTION NO. 32

Each count of the indictment charges each defendant named in that count with having committed a separate offense.

You must give separate consideration both to each count and to each defendant. You must consider each count and the evidence relating to it separate and apart from every other count.

You should return a separate verdict as to each defendant and as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to that defendant under any other count.

INSTRUCTION NO. 33

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. 34

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.