

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

UNITED STATES OF AMERICA)		
)		
v.)	Cause Number:	2:05 CR 139
)		
THOMAS PRIETO and)		
FERNANDO SANZ.)		

COURT'S FINAL JURY INSTRUCTIONS

Dated: June 6, 2007

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

COURT'S 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.

COURT'S 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.

COURT'S 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 age;
- 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.

COURT'S 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.

COURT'S 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.

COURT'S INSTRUCTION NO. 6

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.

COURT'S INSTRUCTION NO. 7

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

COURT'S INSTRUCTION NO. 8

The 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 are charged with one count of possessing with the intent to distribute more than 500 grams of a mixture or substance containing a detectable amount of methamphetamine. The defendants have pleaded not guilty to the charge.

COURT'S INSTRUCTION NO. 9

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.

COURT'S INSTRUCTION NO. 10

The defendants have an absolute right not to testify. The fact that the defendants did not testify should not be considered by you in any way in arriving at your verdict.

COURT'S INSTRUCTION NO. 11

You have received evidence of statements said to be made by the defendants to Officer Oscar Martinez of the Lake County, Indiana, Sheriff's Department. You must decide whether the defendant did in fact make the statement. If you find that the defendant did not make the statement, 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.

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

COURT'S INSTRUCTION NO. 13

Among the exhibits admitted during the trial were recordings that contained conversations in the Spanish language. You were also provided with English transcripts of those conversations. The transcripts were provided to you so that you could consider the content of the conversations on the recordings.

Whether a transcript is an accurate translation, in whole or in part, is for you to decide. In considering whether a transcript accurately describes the meaning of a conversation, you should consider the testimony presented to you regarding how, and by whom, the transcript was made. You may consider the knowledge, training, and experience of the translator, as well as the nature of the conversation and the reasonableness of the translation in light of all the evidence in the case. You should not rely in any way on any knowledge you may have of the language spoken on the recording; your consideration of the transcripts should be based on the evidence introduced in the trial.

COURT'S INSTRUCTION NO. 14

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. Each defendant is entitled to have his case decided on the evidence and law that applies to that defendant.

COURT'S INSTRUCTION NO. 15

Count One of the indictment charges the defendants with violating Title 21, United States Code, Section 841(a)(1), which states, in part, as follows:

“[I]t shall be unlawful for any person knowingly or intentionally –
(1) to possess with intent to distribute a controlled substance . . .”

COURT'S INSTRUCTION NO. 16

To sustain the charge in Count One of the indictment, the government must prove the following propositions:

First: The defendants knowingly or intentionally possessed methamphetamine;

Second: The defendants possessed methamphetamine with the intent to deliver it to another person.

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

If you find from your consideration of all of the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendants guilty of that charge.

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 defendants not guilty of that charge.

COURT'S NO. 17

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.

COURT'S INSTRUCTION NO. 18

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 discretion and control over it, either directly or through others.

The law recognizes also that possession may be sole or joint. If one person alone has possession of a thing, then the possession is sole. If two or more persons share possession of a thing, then the possession is joint.

COURT'S INSTRUCTION NO. 19

You are instructed that methamphetamine is a controlled substance.

COURT'S NO. 20

Any person who knowingly aids, counsels, commands, induces or procures the commission of an offense may be found guilty of that offense. That person must knowingly associate with the criminal activity, participate in the activity, and try to make it succeed.

COURT'S INSTRUCTION NO. 21

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.

COURT'S INSTRUCTION NO. 22

If a defendant performed acts that advanced a criminal activity but had no knowledge that a crime was being committed or was about to be committed, these acts alone are not sufficient to establish the defendant's guilt.

COURT'S INSTRUCTION NO. 23

The indictment charges that the offense was committed "on or about" August 26, 2005. The government must prove that the alleged offense happened reasonably close to that date but is not required to prove that the alleged offense happened on that exact date.

COURT'S 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 and date the appropriate forms, and each of you will sign them.

COURT'S INSTRUCTION NO. 25

The indictment charges each defendant with having committed a separate offense. You must give separate consideration to each defendant. You should return a separate verdict as to each defendant.

COURT'S INSTRUCTION NO. 26

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.

COURT'S INSTRUCTION NO. 27

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.