

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

UNITED STATES OF AMERICA)
)
 v.)
)
ARTHUR J. SIMS)

Cause Number: 2:06 CR 85

FINAL JURY INSTRUCTIONS

Date: August 29, 2007

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

INSTRUCTION NUMBER 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 NUMBER 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.

INSTRUCTION NUMBER 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.

INSTRUCTION NUMBER 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 NUMBER 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 NUMBER 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 NUMBER 7

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

The defendant is charged in the Superseding Indictment with four counts of distributing heroin, one count of knowingly and intentionally possessing heroin with the intent to distribute it, one count of possessing a firearm after having been convicted of a felony, one count of possessing ammunition after having been convicted of a felony, and one count of possessing a firearm in furtherance of a drug trafficking crime. The defendant has pleaded not guilty to the charges.

INSTRUCTION NUMBER 8

The defendant is 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 defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

INSTRUCTION NUMBER 9

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

INSTRUCTION NUMBER 10

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 NUMBER 11

The Superseding Indictment charges the defendant with violating Title 21, United States Code, Section 841(a)(1), which states, in part, as follows:

It shall be unlawful for any person to knowingly or intentionally distribute or possess with intent to distribute a controlled substance.

INSTRUCTION NUMBER 12

To sustain the charge distributing a detectable amount of heroin as charged in Counts 1, 2, 3, and 4 of the Superseding Indictment, the government must prove the following propositions:

First, the defendant distributed a detectable amount of heroin;

Second, the defendant did so knowingly or intentionally; and

Third, the defendant knew the substance was a controlled substance.

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 of this charge.

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 of this charge.

INSTRUCTION NUMBER 13

To sustain the charge of possession of a detectable amount of heroin with intent to distribute as charged in Count 5 of the Superseding Indictment, the government must prove the following propositions:

First, the defendant knowingly or intentionally possessed a detectable amount of heroin;

Second, the defendant possessed a detectable amount of heroin with the intent to deliver it to another person.

It does not matter whether the defendant 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 defendant guilty of this charge.

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 of this charge.

INSTRUCTION NUMBER 14

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 NUMBER 15

Distribution is the transfer or attempted transfer of possession from one person to another.

INSTRUCTION NUMBER 16

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 NUMBER 17

You are instructed that heroin is a controlled substance.

INSTRUCTION NUMBER 18

The Superseding Indictment charges the defendant with possessing a firearm and ammunition after having been convicted of a crime punishable by a term of imprisonment of more than one year.

Title 18 of the United States Code, Section 922(g)(1) provides, in part:
It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to possess in or affecting commerce, any firearm or ammunition.

INSTRUCTION NUMBER 19

To sustain the charge of unlawful possession of a firearm as charged in Count 6 of the Superseding Indictment, the government must prove the following propositions:

First, that prior to on or about March 25, 2006, 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 March 25, 2006, 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 NUMBER 20

To sustain the charge of unlawful possession of ammunition as charged in Count 7 of the Superseding Indictment, the government must prove the following propositions:

First, that prior to on or about March 25, 2006, 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 March 25, 2006, the defendant knowingly possessed ammunition; and

Third, that the ammunition 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 NUMBER 21

A firearm or ammunition has traveled in interstate commerce if it has traveled between one state and any other state or country, or across a state or national boundary line. The government need not prove how the firearm or ammunition traveled in interstate commerce, or that the firearm's or ammunition's travel was related to the defendant's possession of it, or that the defendant knew the firearm or ammunition had traveled in interstate commerce.

INSTRUCTION NUMBER 22

Title 18 of the United States Code, Section 924(c) provides in part:

Any person who, during and in relation to any crime of violence or drug trafficking crime uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm shall be guilty of an offense against the United States.

INSTRUCTION NUMBER 23

To sustain the charge of possessing a firearm in furtherance of a drug trafficking crime as charged in Count 8 of the Superseding Indictment, the government must prove the following propositions:

First, that the defendant committed the crime of possession of a detectable amount of heroin with intent to distribute it, as charged in Count 5 of the Superseding Indictment; and

Second, that the defendant knowingly possessed a firearm in furtherance of that crime.

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 NUMBER 24

In determining whether the defendant possessed a firearm “in furtherance of” the offense charged in Count 5 of the Superseding Indictment, you are instructed that possession of a firearm is in furtherance of a drug-trafficking if the possession assists in furthering, advancing or helping the drug-trafficking crime.

The mere presence of a firearm at a location is not sufficient to find that the firearm was possessed in furtherance of a drug-trafficking crime but can be considered along with other factors. Some factors that you may consider in determining whether a firearm possession was in furtherance of a drug-trafficking crime include, but are not limited to, (1) the type of firearm, (2) whether the firearm was stolen, (3) whether the firearm possession was legitimate or illegal, (4) whether the firearm was loaded, (5) the accessibility of the firearm, (6) the proximity of the firearm to the drugs, drug profits or materials used for the drug trafficking, (7) the type of drug activity that is being conducted, and (8) the time and circumstances under which the firearm was found.

INSTRUCTION NUMBER 25

The Superseding Indictment charges that the offenses were committed “on or about” certain dates. The government must prove that the alleged offense happened reasonably close to each of those dates but is not required to prove that the alleged offenses happened on those exact dates.

INSTRUCTION NUMBER 26

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 each of you will sign the appropriate form.

INSTRUCTION NUMBER 27

Each count of the Superseding Indictment charges the defendant with having committed a separate offense.

Each count and the evidence relating to it should be considered separately, and a separate verdict should be returned 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 any other count.

INSTRUCTION NUMBER 28

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 NUMBER 29

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.