

FILED

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

MAY 13 2005

At _____ M
STEPHEN R. LUDWIG, Clerk
U.S. DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,

Plaintiff,

v.

OSCAR HERRERA VALDEZ,

Defendant.

No. 2:04-CR-97

COURT'S FINAL JURY INSTRUCTIONS

Date: May 12, 2005

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.

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 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.

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

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.

Court's Instruction No. 9

You have heard a witness 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 opinions, the witness's qualifications, and all of the other evidence in the case.

Court's Instruction No. 10

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.

Court's Instruction No. 11

The 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.

Oscar Herrera Valdez, the defendant, is charged in Count 1 with possession with the intent to distribute a quantity of cocaine. The defendant is charged in Count 2 with possession with the intent to distribute a quantity of marijuana.

The defendant has pled not guilty to the charges.

Court's Instruction No. 12

Count 1 of the indictment charges that on or about October 20, 2004, the defendant did

~~possess with intent to distribute cocaine in violation of Title 21, United States Code, Section~~

841(a)(1), which provides in pertinent part:

[I]t shall be unlawful for any person knowingly or intentionally to . . . distribute . . . or possess with intent to . . . distribute . . . a controlled substance.

You are instructed that possession with intent to distribute is an offense prohibited by the Controlled Substances Act.

Court's Instruction No. 13

Count 2 of the indictment charges that on or about October 20, 2004, the defendant did

knowingly and intentionally possess with the intent to distribute marijuana, in violation of Title

21, United States Code, Section 841(a)(1), which provides in pertinent part:

[I]t shall be unlawful for any person knowingly or intentionally to . . . distribute . . . or possess with intent to . . . distribute . . . a controlled substance.

You are instructed that possession with intent to distribute is an offense prohibited by the Controlled Substances Act.

Court's Instruction No. 14

You are instructed that cocaine and marijuana are controlled substances.

Court's Instruction No. 15

The indictment charges that the offense was committed "on or about" October 20, 2004.

~~The government must prove that the 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. 16

To sustain the charge of possession of cocaine with intent to distribute as charged in

Count 1, the government must prove the following propositions:

First, the defendant knowingly or intentionally possessed cocaine;

Second, the defendant possessed cocaine with the intent to deliver it to another person.

It does not matter whether the defendant knew the substance was cocaine. 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.

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 defendant not guilty.

Court's Instruction No. 17

To sustain the charge of possession of marijuana with intent to distribute, the government

must prove the following propositions:

First, the defendant knowingly or intentionally possessed marijuana;

Second, the defendant possessed marijuana with the intent to deliver it to another person.

It does not matter whether the defendant knew the substance was marijuana. 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.

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 defendant not guilty.

Court's Instruction No. 18

Each count of the 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.

Court's Instruction No. 19

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.

Court's Instruction No. 20

It is sufficient that the defendant knew that the substance was some kind of prohibited

drug. It does not matter whether the defendant knew that the substance was cocaine or

marijuana.

Court's Instruction No. 21

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.

Court's Instruction No. 22

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

Court's Instruction No. 23

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, those acts alone are not sufficient to establish the defendant's guilt.

Court's Instruction No. 24

(A) 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.

(B) If a defendant knowingly caused the acts of another the defendant is responsible
for those acts as though he/she personally committed them.

Court's Instruction No. 25

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 and I will read them to you shortly.

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.

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.