

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 2:05 CR 76
	)	
JAMES R. WINBUSH, JR.,	)	
	)	
Defendant.	)	

**FINAL JURY INSTRUCTIONS**

Date: November 15, 2007

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.

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 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.

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 Second 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 with the offenses of (1) knowingly and intentionally distributing five grams or more of cocaine base; (2) knowingly and intentionally possessing with intent to distribute five grams or more of cocaine base; (3) knowingly and intentionally possessing with intent to distribute marijuana; (4) knowingly possessing a firearm after having been convicted of a prior felony offense; and (5) knowingly and intentionally possessing a firearm in furtherance of a drug trafficking crime. The defendant has pleaded not guilty to the charges.

COURT'S INSTRUCTION NO. 9

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. 10

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.

COURT'S INSTRUCTION NO. 11

You have heard evidence that the government and the defendant have stipulated that the defendant has been convicted of a crime punishable by a term of imprisonment of more than one year. You may therefore accept this fact as true.

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

COURT'S 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.

COURT'S INSTRUCTION NO. 14

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

COURT'S INSTRUCTION NO. 15

You have heard testimony from Timothy Frazier who received benefits from the government in connection with this case.

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



COURT'S INSTRUCTION NO. 16

To sustain the charge of distributing cocaine base, as charged in Count 1 of the Second Superseding Indictment, the government must prove the following propositions:

First, the defendant distributed cocaine base;

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.

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

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

COURT'S INSTRUCTION NO. 18

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. 19

To sustain the charge of possession with intent to distribute cocaine base, as charged in Count 2 of the Second Superseding Indictment, the government must prove the following propositions:

First, the defendant knowingly or intentionally possessed cocaine base;

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

It does not matter whether the defendant knew the substance was cocaine base. 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. 20

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 or control over it, either directly or through others.

COURT'S INSTRUCTION NO. 21

You are instructed that cocaine base is a controlled substance.

COURT'S INSTRUCTION NO. 22

To sustain the charge of possession with intent to distribute marijuana, as charged in Count 3 of the Second Superseding Indictment, 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. 23

You are instructed that marijuana is a controlled substance.



COURT'S INSTRUCTION NO. 24

To sustain the charge of unlawful possession of a firearm in Count 4, the government must prove the following propositions:

First, that, prior to December 20, 2004, the defendant had been convicted of a crime that was punishable by a term of imprisonment of more than one year;

Second, that on December 20, 2004, the defendant knowingly possessed a firearm; and

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

COURT'S INSTRUCTION NO. 25

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.

COURT'S INSTRUCTION NO. 26

A firearm has traveled in interstate commerce if it has traveled between one state and any other state, or across a state 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.

COURT'S INSTRUCTION NO. 27

In determining whether or not the defendant committed the offense of knowingly possessing a firearm after having been convicted of a prior felony, you have a duty to consider only the evidence of possession presented by the government, and without considering the defendant's prior conviction as evidence of his propensity to carry weapons.

COURT'S INSTRUCTION NO. 28

To sustain the charge of possessing a firearm in furtherance of a drug crime in Count 5, the government must prove the following propositions:

First, that the defendant committed one of the following crimes: 1) distribution of five grams or more of cocaine base, as charged in Count 1 of the Second Superseding Indictment; 2) possession with intent to distribute five grams or more of cocaine base, as charged in Count 2 of the Second Superseding Indictment; or 3) possession with intent to distribute marijuana, as charged in Count 3 of the Second Superseding Indictment;

and

Second, that the defendant knowingly possessed a firearm in furtherance of one or more of those crimes.

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.

COURT'S INSTRUCTION NO. 29

In determining whether a defendant possessed a firearm “in furtherance of” a crime, you are instructed that the phrase “in furtherance of” means that the firearm must have some purpose or effect with respect to the crime. The presence of a firearm cannot be the result of an accident or coincidence. The firearm must facilitate or have the potential to facilitate the crime.

COURT'S INSTRUCTION NO. 30

Count 5 of the indictment alleges that the defendant knowingly possessed a firearm in furtherance of a drug trafficking crime. In order to prove the defendant guilty of Count 5, the government need not prove that the defendant possessed the gun in furtherance of all of the drug crimes alleged in Counts 1, 2, and 3. However, the government must prove that the defendant knowingly possessed a firearm in furtherance of at least one of the specific crimes alleged in Counts 1, 2, or 3. In order to find that the government has proved the defendant knowingly possessed a firearm in furtherance of a drug crime, you must unanimously agree that the defendant knowingly possessed a firearm in furtherance of one of the crimes alleged in Counts 1, 2, or 3.

The indictment charges that the offenses were committed “on or about” December 20, 2004. 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.



COURT'S INSTRUCTION NO. 32

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 form, and each of you will sign it.

COURT'S INSTRUCTION NO. 33

Each count of the Second 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.

COURT'S INSTRUCTION NO. 34

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. 35

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.