

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
FEB 14 2008
[Signature]
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

EKUETA PALEGA, a/k/a "Q" Palega,

Defendant.

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CR 07-30010

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Ladies and gentlemen of the jury, it is my duty now to explain the rules of law you must apply to this case.

You as jurors are the sole judges of the facts. But it is your duty to follow the law stated in these instructions, and to apply that law to the facts as you find them from the evidence before you. It would be a violation of your sworn duty to base your verdicts upon any rules of law other than the ones given you in these instructions, regardless of your personal feelings as to what the law ought to be.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

INSTRUCTION NO. 2

You have been chosen and sworn as jurors to try the issues of fact presented by the allegations of the indictment and the denial made by the defendant in his pleas of "not guilty." You are to perform this duty without bias or prejudice, because the law does not permit jurors to be governed by sympathy or public opinion. The accused and the public expect that you will carefully and impartially consider all of the evidence and will follow the law as stated by the Court, in order to reach just verdicts, regardless of the consequences to any party.

INSTRUCTION NO. 3

The indictment in this case charges that the defendant committed the crimes of conspiracy to distribute or possess with intent to distribute methamphetamine and possession with intent to distribute a mixture or substance containing a detectable amount of methamphetamine. The defendant has pleaded not guilty to these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Therefore, the defendant, even though charged, begins the trial with no evidence against him. This presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

There is no burden upon the defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify about the allegations of the indictment must not be considered by you in any way, or even discussed, in arriving at your verdicts.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

INSTRUCTION NO. 4

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 5

I have mentioned the word "evidence." The evidence in this case consists of the testimony of witnesses, the documents and other things received as exhibits and the facts that have been stipulated -- that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony and questions that I struck from the record, or told you to disregard, are not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

INSTRUCTION NO. 6

There are two types of evidence from which you may find the truth as to the facts of a case--direct evidence and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct evidence or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

INSTRUCTION NO. 7

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 8

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of a greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

INSTRUCTION NO. 9

You have heard testimony that the defendant Ekueta Palega made a statement to Drug Task Force Agents. It is for you to decide:

First, whether the defendant made the statements and

Second, if so, how much weight you should give to them.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NO. 10

You have heard evidence that the defendant was a user of methamphetamine and that he had previously delivered methamphetamine to others for Patrick Medearis. If you find that such activities were not part of the conspiracy alleged in Count I of the indictment, then you may not use this evidence to decide whether the defendant carried out the acts involved in the crimes charged in the indictment. However, if you are convinced beyond a reasonable doubt, based on other evidence introduced, that the defendant did carry out the acts involved in the crimes charged in the indictment and you are convinced that the Patrick Medearis activities were not part of the conspiracy, then you may use this evidence as to Patrick Medearis to decide defendant's motive, opportunity, intent, preparation, plan, knowledge, or absence of mistake or accident as to Counts I and II.

INSTRUCTION NO. 11

You have received evidence that Phillip Burnette, Max Jensen, and John Farmer hope to receive reduced sentences on criminal charges in return for cooperation with the government in this case. Phillip Burnette, Max Jensen, and John Farmer entered into "plea agreements" with the government which provide that, in return for assistance, the government may file a motion for reduction in sentence. If the prosecutor handling these witnesses' cases believes a witness provided substantial assistance, that prosecutor can file a motion to reduce the sentence. The judge has no power to reduce a sentence (if the sentence has been imposed) for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

You may give the testimony of these witnesses such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by hope of receiving a reduced sentence is for you to decide.

The witnesses' guilty pleas cannot be considered by you as any evidence of this defendant's guilt. The witnesses' guilty pleas can be considered by you only for the purpose of determining how much, if at all, to rely upon the witnesses' testimony.

INSTRUCTION NO. 12

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state opinions on matters in that field and may also state the reasons for those opinions.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NO. 13

The crime of conspiracy to distribute or possess with intent to distribute methamphetamine, a schedule II controlled substance, as charged in Count I of the indictment, has three essential elements, which are:

1. That beginning on or about between the 1st day of January 2002, and the 1st day of December, 2006, in the District of South Dakota and elsewhere, Ekueta Palega and one or more other persons reached an agreement or came to an understanding to distribute a mixture or substance containing methamphetamine;
2. That Ekueta Palega voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and
3. That at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

For you to find Ekueta Palega guilty of this crime, as charged in Count I of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find Ekueta Palega not guilty of this crime.

INSTRUCTION NO. 14

You will note that Count I of the indictment charges that the offense was committed “on or about between” certain dates. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date or dates reasonably near the dates alleged.

INSTRUCTION NO. 15

The law permits the jury to find the defendant guilty of any lesser offense which is necessarily included in the crime charged in the indictment, whenever such a course is consistent with the facts found by the jury from the evidence in the case, and with the law as given in the instructions of the Court.

So, if you should unanimously find the defendant "Not Guilty" of the crime of conspiracy to distribute or possess with intent to distribute methamphetamine, as charged in Count I of the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count I of the indictment, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of simple possession under this Instruction.

The crime of simple possession, a lesser included offense of the crime of conspiracy to distribute or possess with intent to distribute methamphetamine, has two essential elements, which are:

1. That beginning on or about between the 1st day of January 2002, and the 1st day of December, 2006, in the District of South Dakota and elsewhere, the defendant possessed methamphetamine; and
2. The defendant did not have a valid prescription, or other lawful reason to possess said substance.

For you to find the defendant guilty of this crime, a lesser included offense of the crime of conspiracy to distribute or possess with intent to distribute methamphetamine, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 16

The government must prove that the defendant reached an agreement or understanding with at least one other person. It makes no difference whether that other person is a defendant or named in the indictment.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

You must decide, after considering all of the evidence, whether the conspiracy alleged in the indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

INSTRUCTION NO. 17

It is not necessary for the government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

INSTRUCTION NO. 18

The crime of possession of methamphetamine with intent to distribute, as charged in Count II of the indictment, has three elements, which are:

1. That on or about the 1st day of December, 2006, in the District of South Dakota, Ekueta Palega was in possession of methamphetamine;
2. That Ekueta Palega knew that he was or intended to be in possession of a controlled substance, namely methamphetamine; and
3. That Ekueta Palega intended to distribute some or all of the methamphetamine to another person.

For you to find Ekueta Palega guilty of this crime, as charged in Count II of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find Ekueta Palega not guilty of this crime.

INSTRUCTION NO. 19

The law permits the jury to find the defendant guilty of any lesser offense which is necessarily included in the crime charged in the indictment, whenever such a course is consistent with the facts found by the jury from the evidence in the case, and with the law as given in the instructions of the Court.

So, if you should unanimously find the defendant "Not Guilty" of the crime of possession of methamphetamine with intent to distribute, as charged in Count II of the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count II of the indictment, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of simple possession under this Instruction.

The crime of simple possession, a lesser included offense of the crime charged in Count II of the indictment, has two essential elements, which are:

1. That on or about the 1st day of December, 2006, in the District of South Dakota, the defendant possessed methamphetamine; and
2. The defendant did not have a valid prescription, or other lawful reason to possess said substance.

For you to find the defendant guilty of this crime, a lesser included offense of the crime of possession of methamphetamine with intent to distribute as charged in Count II of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 20

Intent may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of the intent of the defendant.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

INSTRUCTION NO. 21

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

A verdict form has been prepared for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdicts, you will have your foreperson fill in, date and sign the form to state the verdicts upon which you unanimously agree, and then return with your verdicts to the courtroom.

INSTRUCTION NO. 22

The verdicts must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdicts must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 23

If you have questions, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury.

You will note from the oath about to be taken by the marshal that the marshal and all other persons are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached unanimous verdicts.

INSTRUCTION NO. 24

It is proper to add a final caution.

Nothing that I have said in these instructions—and nothing that I have said or done during the trial—has been said or done to suggest to you what I think your verdicts should be.

What the verdicts shall be is your exclusive duty and responsibility.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

EKUETA PALEGA, a/k/a "Q" Palega,

Defendant.

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CR 07-30010

VERDICT

Please return a verdict by placing an "X" in the space provided.

COUNT I

We, the jury in the above entitled action, as to the crime of conspiracy to distribute or possess with intent to distribute methamphetamine, find Ekueta Palega:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Ekueta Palega NOT GUILTY of conspiracy to distribute or possess with intent to distribute methamphetamine, or if, after all reasonable efforts, you are unable to reach a verdict as to that crime, then you must deliberate on the lesser included offense of simple possession, and complete the following:

We, the jury in the above entitled action, as to the crime of simple possession, a lesser included offense of conspiracy to distribute or possess with intent to distribute methamphetamine, find Ekueta Palega:

_____ NOT GUILTY _____ GUILTY

COUNT II

We, the jury in the above entitled action, as to the crime of possession of methamphetamine with intent to distribute, find Ekueta Palega:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Ekueta Palega NOT GUILTY of possession of methamphetamine with intent to distribute, or if, after all reasonable efforts, you are unable to reach a verdict as to that crime, then you must deliberate on the lesser included offense of simple possession, and complete the following:

We, the jury in the above entitled action, as to the crime of simple possession, a lesser included offense of conspiracy to distribute or possess with intent to distribute methamphetamine, find Ekueta Palega:

_____ NOT GUILTY _____ GUILTY

Dated this _____ day of February, 2008.

Foreperson