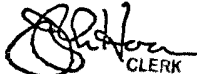


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JUL 20 2011

CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

*
UNITED STATES OF AMERICA, * CR. 10-30053-01-RAL
*
Plaintiff, *
*
-vs- * FINAL
* JURY INSTRUCTIONS
*
LORI SEEKING LAND, *
*
Defendant. *

INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 3

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 -- this 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 that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

INSTRUCTION NO. 4

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. 5

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

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you may 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. 6

The indictment in this case charges the defendant with three different crimes. Under Count I, the indictment charges that the defendant committed the crime of Conspiracy to Distribute or Possess with the Intent to Distribute 50 Grams or more of a mixture or substance containing Methamphetamine. Counts II and III of the indictment charge that the defendant committed the crime of Distribution of a mixture or substance containing Methamphetamine on two separate occasions. The Defendant has pleaded not guilty to each of 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. Thus the defendant, even though charged, begins the trial with no evidence against her. The 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 element of the crime charged.

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. 7

The crime of Conspiracy to Distribute or Possess with the Intent to Distribute 50 grams or more of a mixture or substance containing Methamphetamine, as charged in Count I of the indictment, has four essential elements, which are:

One, beginning on or about October 2008 and continuing through July 7, 2010, two or more persons reached an agreement or came to an understanding to distribute or possess with the intent to distribute a mixture or substance containing methamphetamine;

Two, the Defendant 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;

Three, at the time the Defendant joined in the agreement or understanding, she knew the purpose of the agreement or understanding; and

Four, the agreement or understanding involved 50 grams or more of a mixture or substance containing methamphetamine.

If you find unanimously that the Government has proved these four elements beyond a reasonable doubt as to the Defendant, then you must find the Defendant guilty of the crime charged in Count I of the Indictment.

If you find the Defendant not guilty of the crime of Conspiracy to Distribute or Possess with the Intent to Distribute 50 grams or more of a mixture or substance containing Methamphetamine, you must then consider whether the Defendant committed the lesser included offense of conspiracy to distribute or possess with the intent to distribute some amount of a mixture or substance containing methamphetamine. If you find the first three elements set forth above unanimously and beyond a reasonable doubt, you must find the Defendant guilty of the crime of conspiracy to distribute some amount of a mixture or substance containing methamphetamine. Otherwise, you must find the Defendant not guilty.

The quantity of controlled substances involved in the agreement or understanding includes the controlled substances the Defendant possessed for personal use or distributed or agreed to distribute. The quantity also includes the controlled substances fellow conspirators distributed or agreed to distribute, if you find that those distributions or agreements to distribute were a necessary and natural consequence of the agreement or understanding and were reasonably foreseeable by the Defendant.

INSTRUCTION NO. 8

The law of the United States makes it illegal for any person, knowingly or intentionally, to possess a controlled substance with the intent to distribute. Methamphetamine is a controlled substance. To assist you in determining whether there was an agreement or understanding to possess methamphetamine with the intent to distribute, which was the alleged objective of the conspiracy, you must determine whether the crime of possession of methamphetamine with the intent to distribute occurred.

The crime of possession of methamphetamine with the intent to distribute has three elements, which are:

***One*, a person was in possession of methamphetamine;**

***Two*, the person knew that she was, or intended to be, in possession of methamphetamine;**

***Three*, the person intended to distribute some or all of the methamphetamine to another person.**

INSTRUCTION NO. 9

On Count I, the Government must prove, among other things, that the Defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is a defendant or named in the indictment. However, an agreement exclusively between the defendant and a government agent or informant does not establish a conspiracy.

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. 10

The crime of distributing a mixture or substance containing methamphetamine, as charged in Count II of the indictment, has two elements, which are:

One, on or about November 24, 2009, the Defendant intentionally distributed a mixture or substance containing methamphetamine to another person; and

Two, at the time of the distribution, the Defendant knew that what she was distributing was a mixture or substance containing methamphetamine.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, and if it has further been proved beyond a reasonable doubt that the defendant was not entrapped as defined in Instruction 12, then you must find the defendant guilty of the crime charged in Count II of the indictment; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 11

The crime of distributing a mixture or substance containing methamphetamine, as charged in Count III of the indictment, has two elements, which are:

One, on or about January 14, 2010, the Defendant intentionally distributed a mixture or substance containing methamphetamine to another person; and

Two, at the time of the distribution, the Defendant knew that what she was distributing was a mixture or substance containing methamphetamine.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, and if it has further been proved beyond a reasonable doubt that the defendant was not entrapped as defined in Instruction 12, then you must find the defendant guilty of the crime charged in Count III of the indictment; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

One of the issues in this case is whether the defendant was entrapped into the offenses. If the defendant was entrapped, she must be found not guilty. The Government has the burden of proving beyond a reasonable doubt that the defendant was not entrapped into the offenses.

If the defendant before contact with Tanner Shields did not have any intent or disposition to commit the crime charged and was induced or persuaded by Tanner Shields to commit that crime, then she was entrapped. On the other hand, if the defendant before contact with Tanner Shields did have an intent or disposition to commit the crime charged, or if Tanner Shields did not induce or persuade the defendant to commit the crime charged, then the defendant was not entrapped, even though Tanner Shields provided a favorable opportunity to commit the crime or made committing the crime easier or even participated in acts essential to the crime.

INSTRUCTION NO. 13

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

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. 14

The indictment charges that the offenses were committed “on or about” a certain date. The proof need not establish with certainty the exact date or dates of the alleged offenses. It is sufficient if the case establishes beyond a reasonable doubt that the offenses were committed on a date or dates reasonably near the date alleged.

INSTRUCTION NO. 15

You have heard evidence that certain of the witnesses have been convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give his or her testimony.

INSTRUCTION NO. 16

You have heard evidence that certain witnesses have made plea agreements with the Government, that certain witnesses have testified that they participated in the crime charged against the Defendant, and that certain witnesses may hope to receive a reduced sentence in return for cooperation with the Government. Such testimony was received in evidence and may be considered by you. You may give all of this testimony such weight as you think it deserves. Whether or not testimony may have been influenced by a plea agreement or the hope to receive a reduced sentence is for you to determine.

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

INSTRUCTION NO. 17

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. 18

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict - whether guilty or not guilty - must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the Government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fifth, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Sixth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not guilty must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

The verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

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CR 10-30053-01-RAL

VERDICT FORM

-vs-

LORI SEEKING LAND,
Defendant.

We, the jury, duly empaneled and sworn to try the issues in this case find as follows:

1. We find Defendant Lori Seeking Land, _____ (fill in either "guilty" or "not guilty") of Conspiracy to Distribute or Possess with the Intent to Distribute 50 grams or more of a mixture or substance containing Methamphetamine.

If and only if, you found Defendant Lori Seeking Land NOT GUILTY of the crime 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, then you must deliberate on the lesser included offense of Conspiracy to Distribute or Possess with the Intent to Distribute a mixture or substance containing Methamphetamine.

2. (Answer only if you found Defendant "not guilty" in part 1 above) We find Defendant Lori Seeking Land, _____ (fill in either "guilty" or "not guilty") of the lesser included offense of Conspiracy to Distribute or Possess with the Intent to Distribute some amount of a mixture or substance containing Methamphetamine.

3. We find Defendant Lori Seeking Land, _____ (fill in either "guilty" or "not guilty") of Distributing Methamphetamine as charged in Count II.

4. We find Defendant Lori Seeking Land, _____ (fill in either "guilty" or "not guilty") of Distributing Methamphetamine as charged in Count III.

Dated July ____, 2011

Foreperson