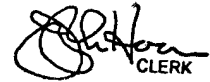


**FILED**

APR 13 2011

  
CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

-vs-

JL DYE,

Defendant.

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CR. 10-30098-RAL

Final  
JURY INSTRUCTIONS

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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

The indictment in this case charges that the Defendant committed the crime of Conspiracy to Distribute More Than 50 Kilograms of Marijuana. The Defendant has pleaded not guilty to that charge.

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 him. 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.

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

INSTRUCTION NO. 6

The crime of Conspiracy to Distribute More Than 50 Kilograms of Marijuana, as charged in the indictment, has four essential elements, which are:

***One*, beginning on or about no later than March of 2009, and continuing to on or about December of 2009, two or more persons reached an agreement or came to an understanding to distribute marijuana;**

***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, he knew the purpose of the agreement or understanding; and**

***Four*, the agreement or understanding involved more than 50 kilograms of marijuana.**

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 the indictment.

If you find the Defendant not guilty of the crime of Conspiracy to Distribute More than 50 Kilograms of Marijuana, you must then consider whether the Defendant committed the lesser included offense of conspiracy to distribute some amount of marijuana. 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 marijuana. 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. 7

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

The crime of distributing marijuana has two elements, which are:

***One*, a person intentionally distributed marijuana to another; and**

***Two*, at the time of the distribution, the person knew that what he or she was distributing was marijuana.**



### INSTRUCTION NO. 8

The Government must prove 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.

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. 9

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. 10

You have heard evidence that witnesses Adam Major, Melissa Rieger, William Derek Leaver, and Shaun Dye have pled guilty to a crime which arose out of the same events for which the Defendant is on trial here. You must not consider those guilty pleas as any evidence of this Defendant's guilt. You may consider those witnesses' guilty pleas only for the purpose of determining how much, if at all, to rely upon that those witnesses' testimony.

INSTRUCTION NO. 11

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. 12

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. 13

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. 14

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

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UNITED STATES OF AMERICA,  
Plaintiff,

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CR 10-30098-RAL

VERDICT FORM

-vs-

JL Dye,

Defendant.

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

1. We find Defendant JL Dye, \_\_\_\_\_ (fill in either "guilty" or "not guilty") of Conspiracy to Distribute More than 50 Kilograms of Marijuana.

If and only if, you found Defendant JL Dye NOT GUILTY of the crime charged in the Indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in the Indictment, then you must deliberate on the offense of Conspiracy to Distribute Marijuana.

2. We find Defendant JL Dye, \_\_\_\_\_ (fill in either "guilty" or "not guilty") of Conspiracy to Distribute Marijuana.

Dated April \_\_\_\_, 2011

\_\_\_\_\_  
Foreperson