

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

**FILED**

MAR 15 2017

  
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WAYNE WILLIAM THOMPSON,

Defendants.

1:16-CR-10042-RAL-1

FINAL JURY INSTRUCTIONS

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. The instructions I am about to give you now are in writing and will be available to you in the jury room.

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.

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—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 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.

When you were instructed that evidence was received for a limited purpose, you must follow that instruction.

#### 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 of any witness 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. A person who, by knowledge, skill, training, education, or experience, has become an expert in some field may state his or her opinion 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' 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 two different crimes. Count I charges the defendant with possession with intent to distribute marijuana. Count II charges the defendant with the use of a communication facility in causing and facilitating the commission of a felony under the Controlled Substances Act. The defendant has pleaded not guilty to these charges.

The indictment is simply the document that formally charges the defendant with the crimes for which he is on trial. The indictment is not evidence of anything. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate, with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty of each count. This presumption can be overcome only if the government proved during the trial, beyond a reasonable doubt, each element of that charge.

Keep in mind that you must consider, separately, each crime charged against the defendant, and you must return a separate verdict for each of those crimes charged.

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

INSTRUCTION NO. 7

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

***One*, that on or about the 25th day of November, 2015, in the District of South Dakota, the defendant, Wayne William Thompson, was in possession of marijuana;**

***Two*, Wayne William Thompson knew that he was in possession of a controlled substance, marijuana; and**

***Three*, Wayne William Thompson took possession of the marijuana with the intent to distribute some or all of the marijuana to another person or persons.**

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find him guilty of the crime charged; otherwise you must find the defendant not guilty of this crime.



INSTRUCTION NO. 8

If you should unanimously find the defendant “Not Guilty” of the crime of possession of marijuana with intent to distribute, as charged in Count I of the indictment, or if, after reasonable efforts, you are unable to reach a verdict as to the crime charged in Count I of the indictment, then you must proceed to determine the guilt or innocence of the defendant as to the crime of possession of a controlled substance under this Instruction.

The crime of possession of a controlled substance, a lesser included offense of the crime of possession of marijuana with intent to distribute as charged in Count I of the indictment, has two essential elements, which are:

***One, that the defendant, Wayne William Thompson, was in possession of marijuana; and***

***Two, that Wayne William Thompson knew that he was in possession of a controlled substance, marijuana.***

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find him guilty of the crime of possession of a controlled substance; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 9

If you should unanimously find the defendant "Guilty" of the crime of possession of marijuana with intent to distribute, as charged in Count I of the indictment, then you must proceed to determine the whether the defendant is guilty or not guilty of the crime of using a communication facility to cause and facilitate the commission of another felony controlled-substance offense, as charged in Count II of the indictment. The crime of using a communication facility to cause and facilitate the commission of another felony controlled-substance offense has two elements, which are:

***One, the defendant, Wayne William Thompson, knowingly used the United States Postal Service; and***

***Two, Wayne William Thompson did so with the intent to cause and facilitate the felony controlled-substance offense described in Instruction No. 7.***

You are instructed that possession with intent to distribute marijuana is a felony controlled-substance offense.

To facilitate the commission of a felony controlled-substance offense means to make committing the crime easier or less difficult, or to assist or aid.

It is not sufficient if a defendant's use of the United States Postal Service only facilitates another person's commission of a felony controlled-substance offense.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find him guilty of the crime of using a communication facility to facilitate the commission of another felony controlled-substance offense; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 10

Intent or knowledge 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 the determination of the defendant's 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. 11

The phrase “with intent to distribute” means to have in mind or to plan in some way to deliver or to transfer possession or control over a thing to someone else.

In attempting to determine the intent of any person you may take into your consideration all the facts and circumstances shown by the evidence received in the case concerning that person.

In determining a person’s “intent to distribute” a controlled substance, you may consider, among other things, in no particular order, the purity of the controlled substance, the quantity of the controlled substance, the presence of equipment in the processing or sale of controlled substances, and large amounts of cash or weapons.

INSTRUCTION NO. 12

The term “distribute” as used in these instructions means to deliver a controlled substance to the possession of another person. “Deliver” means the actual, constructive, or attempted transfer of a controlled substance.

INSTRUCTION NO. 13

As a matter of law, marijuana is a controlled substance under 21 U.S.C. § 802(6).

It is for you to determine whether or not the Government has proven beyond a reasonable doubt that the substance involved in the offense was marijuana.

INSTRUCTION NO. 14

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. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 15

You will note that the Indictment charges that the offenses were committed “on or about” a certain date. The proof need not establish with certainty the exact date of the alleged offense. 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. 16

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, Snapchat, LinkedIn, Instagram, YouTube, My Space 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. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

*Finally*, 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

<p>UNITED STATES OF AMERICA,  Plaintiff,  vs.  WAYNE WILLIAM THOMPSON,  Defendant.</p>	<p>1:16-CR-10042-RAL-1  VERDICT FORM</p>
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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 Wayne William Thompson, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of Possession with Intent to Distribute a Controlled Substance as charged in Count I.
  - 1.A. ***Answer if, and only if, you found the defendant “not guilty” as to Possession with Intent to Distribute a Controlled Substance in Part 1 of this form.***  
We find Defendant Wayne William Thompson, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of the lesser included offense of Possession of a Controlled Substance.
2. We find Defendant Wayne William Thompson, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of Using a Communication Facility to Cause and Facilitate the Commission of Another Felony Controlled-Substance Offense, as charged in Count II.

Dated March \_\_\_\_, 2017

\_\_\_\_\_  
Foreperson