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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

United States of America,

Case No. 3:07CR333

Plaintiff

v.

FINAL JURY INSTRUCTIONS

Michael Baker,

Defendant

JURY INSTRUCTION NO. 1

Introduction

I will now instruct you about the law that you must follow in deciding this case.

The instructions can be divided into three parts: general principles applicable to all criminal trials; specific instructions about the crime charged in this case and what the government must prove; and instructions about your deliberations.

You have copies of the instructions to read as I read the instructions orally. Do not read ahead, as you must listen carefully to everything I say. You can write on the instructions if you wish.

If the instructions as read vary from the printed version, I will make corrections in the version from which I am reading. My instructions as read and so corrected [if such occurs] are what control.

I remind you that if there are any inconsistencies between these instructions and those I read at the beginning of the trial, these are the instructions that control your deliberations.

JURY INSTRUCTION NO. 2

Jurors' Duties

It is for you to determine whether the government has proven its charge against the defendant beyond a reasonable doubt.

You are to decide whether it has done so only on the basis of the evidence you heard during the trial and the exhibits that will be with you in the jury room.

You must apply these instructions and the law as I give them to you. This is so, even if you personally disagree with an instruction or legal doctrine. Personal beliefs can play no role whatsoever in your decision.

The lawyers may discuss the law during their arguments. But if what they say differs from what I say, you must follow what I say. What I say about the law controls.

All the instructions are important, and you should consider them together as a whole.

Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.

JURY INSTRUCTION NO. 3

Presumption of Innocence; Burden of Proof; Reasonable Doubt

The defendant has pled not guilty to the crime charged in the Indictment. An Indictment is not evidence; it is simply the formal notice to the defendant of the charge against him. The mere fact of an Indictment raises no suspicion of guilt.

The government has the burden to prove a charge against the defendant beyond a reasonable doubt. The defendant has no burden, or obligation, to prove anything at all. He is presumed innocent. This presumption of innocence stays with the defendant until all twelve jurors unanimously find beyond a reasonable doubt that the defendant is guilty.

If the government fails to meet its burden of proof as to the charge, you must return a verdict of not guilty. This is so, even if you "think" or "feel" that he may be guilty. If you only think or feel he may be guilty of a charge, the government has not met its burden of proof.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the government has proved the defendant guilty beyond a reasonable doubt as to a charge, return a verdict of guilty. Otherwise you must return a verdict of not guilty.

Proof beyond a reasonable doubt does not mean proof to an absolute certainty or all possible doubt. Possible doubts or doubts based only on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

If you find that the evidence in this case could reasonably support either of two conclusions -- one of guilt, the other of non-guilt -- you return a verdict of not guilty.

JURY INSTRUCTION NO. 4

Evidence Defined

You must make your decision based only on the evidence that you heard here in court and the exhibits that will be with you in the jury room. Do not let anything else influence your decision in any way.

The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My questions to witnesses and my legal rulings are not evidence. Anything that I told you to disregard during the trial is not evidence.

Sometimes I sustained objections to questions by the lawyers. Do not speculate about the reasons for my doing so or what you might have learned had I not upheld an objection.

Likewise, do not speculate about what a witness who was not called to testify might have said, or what else a witness who did testify might have said, had he or she been asked additional questions.

Something that you did not hear or see, or were not permitted by me to hear or see, is not evidence.

Make your decision based only on the evidence, as I have defined it here, and nothing else.

JURY INSTRUCTION NO. 5

Direct and Circumstantial Evidence

Evidence consists generally of two types: “direct” evidence and “circumstantial” evidence. Each type of evidence can be considered by you.

Direct evidence is simply evidence – like the testimony of an eyewitness – which, if you believe it, directly proves a fact. A witness’s statement that he saw rain is direct evidence that it was raining, and you could find that it was raining if you believed the witness’s statement.

^{1P} Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is for you to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight you should or can give to either one, nor is one any better evidence than the other.

You are to consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

JURY INSTRUCTION NO. 6

Opinion Testimony

You have heard the testimony of witnesses who, because of their special education, experience or knowledge, were allowed to express opinions as to certain facts in issue.

You do not have to accept those opinions. In deciding how much weight to give them, consider the witness's qualifications and how he or she reached his or her conclusions.

JURY INSTRUCTION NO. 7

Stipulations

During the trial the lawyers notified you that they “stipulated” to certain facts. Anything to which they have agreed in this manner can be considered by you along with all the other evidence in the case.

Though you may accept stipulated facts as having been proven, you should consider what weight to give to stipulated facts in light of all the evidence in the case. Simply because something has been agreed to by the parties does not make it conclusive.

JURY INSTRUCTION NO. 8

Lawyers' Objections

The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. Do not wonder why they objected or what you might have learned had I not sustained an objection. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that you decide the case only on evidence that the law permits you to hear or see, and that the trial is fair to both sides.

JURY INSTRUCTION NO. 9

Number of Witnesses

Do not make any decisions based only on the number of witnesses who testified about a particular fact or circumstance. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves.

JURY INSTRUCTION NO. 10

Credibility of Witnesses

You alone decide how credible or believable each witness is, and how much weight to give the testimony of each of the witnesses. You can believe everything that a witness said, or only part of it, or none of it at all. But you must act reasonably and carefully in making these decisions.

Some of the things you may consider in evaluating the credibility and weight of a witness's testimony are:

Whether the witness was able to clearly see or hear the things that he or she related to you.
How good the witness's memory seemed to be: was the witness able to remember accurately what happened.

Was there anything else that may have interfered with the witness's ability to perceive or remember the events: was the witness able to see and hear clearly, or was the witness's ability to see and hear impaired.

How did the witness act while testifying. Did he or she look like the truth was being told.
Did the witness have any relationship to the government or the defendant, or anything to gain or lose from the case, that might influence his or her testimony.

Did the witness have any bias, prejudice, or other reason for testifying that might cause the witness to testify untruthfully.

Did the witness at any time – whether during his testimony or at some other time or times – say or do something different from or inconsistent with his testimony.

How believable was the witness's testimony in light of all the other evidence: was the witness's testimony supported or contradicted by other evidence you found believable? If contradicted, what was the reason for the contradictions.

These are among the things you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability.

In deciding which witnesses to believe and how much weight to give to their evidence, use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

JURY INSTRUCTION NO. 11

Testimony of a Cooperating Witness

You have heard the testimony of several witnesses who have entered into agreements with the government. Some of these witnesses received or may receive reduced sentences or other favorable treatment in exchange for their cooperation.

The government's use of a cooperating witness and plea agreements is common and permissible. But you should consider the testimony of such witness with more caution than the testimony of other witnesses.

Consider whether and the extent to which their testimony may have been influenced by what benefits they have received, may receive, or reasonably may expect to receive, even though receipt of those benefits is not absolutely assured.

You cannot find the defendant guilty beyond a reasonable doubt solely on the unsupported testimony of such witness unless you believe the witness's testimony beyond a reasonable doubt.

JURY INSTRUCTION NO. 12

Right Not To Testify

It is not necessary that the defendant testify and every defendant has an absolute right not to testify. Indeed, the defendant has the absolute right not to present any evidence at all.

The fact that the defendant did not testify or present evidence cannot be considered by you for any purpose or in any way whatsoever. You cannot speculate about why the defendant decided to put the government to its proof. His right to do so is guaranteed to us all by the Bill of Rights.

Remember, the government alone has the burden of proving its charge against the defendant beyond a reasonable doubt. There is no burden upon the defendant to prove anything.

JURY INSTRUCTION NO. 13

Court's Rulings and Other Actions

Nothing that I have said or done during the trial was meant to influence your decision in any way.

Do not interpret my rulings on the lawyers' objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case.

Likewise, do not speculate on how I think the case should come out. My views are not evidence, and, to the extent that you think I have any view or opinion, you must disregard those thoughts entirely.

We each have separate duties in a trial. It is your duty – and yours alone – to decide the facts and determine whether the government has met its burden of proving the defendant guilty as charged in the Indictment.

JURY INSTRUCTION NO. 14

Introduction

This concludes my instructions about the general rules that apply in every criminal case.

I will next explain what the government must prove as to each of the charges against the defendant.

Before doing so, I want to emphasize that the defendant is only on trial for the particular crime charged in the Indictment. Your job is limited to deciding whether the government has proven beyond a reasonable doubt that the defendant is guilty as charged.

Whether someone else could be prosecuted for the alleged crime is not a proper matter for you to consider. The possible or actual guilt of others is not a defense to a criminal charge. The possible or actual guilt of others cannot influence your decision in any way.

JURY INSTRUCTION NO. 15

Conspiracy to Distribute

Count One of the Indictment charges that the defendant, in violation of § 846 of Title 21 of the United States Code, participated in a conspiracy to distribute and possess with intent to distribute cocaine and marijuana in violation of § 841(a)(1) of the Code.

Section 846, the conspiracy statute, provides:

Any person who conspires to commit any offense [prohibited by the Controlled Substances Act - that is, narcotics violations] shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the conspiracy.

Section 841(a)(1) provides in pertinent part:

(a) [I]t shall be unlawful for any person knowingly or intentionally—

- (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;

Under the Controlled Substances Act, it is unlawful to conspire to distribute or possess with intent to distribute any controlled substance.

You are instructed as a matter of law that cocaine is a Schedule II controlled substance under the Controlled Substances Act, and marijuana is a Schedule I controlled substance under the same Act.

You are instructed that it is not necessary that you find that the defendant conspired to distribute or possess with intent to distribute all of the controlled substances alleged in the Indictment. It is sufficient if you find that the defendant conspired to distribute or possess with intent to distribute any one of the controlled substances alleged in the Indictment.

JURY INSTRUCTION NO. 16

Elements of § 846 Offense

It is a federal crime for two or more persons to conspire, or agree, to commit a criminal act, even if they never actually achieve their goal.

A conspiracy is a kind of criminal partnership.

To prove the defendant guilty of participating in a conspiracy under § 846 as charged in Count I of the Indictment, the government must prove each of the three following elements beyond a reasonable doubt:

1. The conspiracy alleged in Count 1 of the Indictment existed;
2. The defendant knew of the conspiracy; and
3. The defendant knowingly and voluntarily joined the conspiracy.

If the government fails to prove any one of the foregoing elements beyond a reasonable doubt, you must return of verdict of not guilty.

JURY INSTRUCTION NO. 17

Existence of a Conspiracy

With regard to the first element – the alleged criminal agreement – the government must prove that two or more persons conspired, or agreed, to cooperate with each other to commit a violation of federal law.

This does not require proof of a formal agreement, written or spoken. Nor does this require proof that all the alleged conspirators agreed on all details.

But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. You may consider such conduct in deciding whether the government has proved an agreement. But more than mere conversation, common interests or similarity is necessary to find the existence of a conspiracy beyond a reasonable doubt.

The government must prove a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to commit a violation of federal law. If the government fails to prove such mutual understanding beyond a reasonable doubt, you must return a verdict of not guilty.

An agreement can be proved indirectly, by facts and circumstances which lead to the conclusion that an agreement existed. But it is up to the government to convince you that such facts and circumstances existed in a particular case.

JURY INSTRUCTION NO. 18

Awareness of and Joinder in the Conspiracy

If you find beyond a reasonable doubt that there was a criminal agreement, then you must decide whether the government has proven beyond a reasonable doubt that the defendant:

1. Knew of the conspiracy;
2. Knowingly and voluntarily joined it; and
3. Did so intending to help advance or achieve its goals.

This does not require proof that the defendant knew everything about the conspiracy or everyone else involved, or that he was a member of it from its beginning. Nor does it require proof that a defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection, if proven beyond a reasonable doubt, is enough to find the defendant joined the conspiracy..

But proof that the defendant simply was aware of the conspiracy, or was present or associated with its members, is not enough, even if he approved of or did not object to what was happening. Likewise, just because the defendant may have done something that happened to help the conspiracy does not make him culpable if he was unaware that he was helping the conspiracy, or acted without intending to be helpful to it.

If the government fails to prove beyond a reasonable doubt either the defendant's knowledge of, voluntary joinder in or intent to help advance or achieve the goals of the conspiracy, you must return a verdict of not guilty.

A defendant's knowledge can be proven indirectly by facts and circumstances which lead to the conclusion that he knew about conspiracy and its conspiracy's main purpose.

JURY INSTRUCTION NO. 19

Not Necessary to Prosecute Others

Not everyone who may have been involved in the conspiracy needs to be on trial for you to find that the defendant joined the conspiracy. There is no requirement that all members of a conspiracy be charged and tried in one proceeding together.

Nor is there any requirement that the names of the other conspirators be known. An Indictment can charge a defendant with conspiracy involving people whose names are not known.

What matters is whether the government can prove beyond a reasonable doubt that the defendant agreed with one or more other persons, whether named in the Indictment or not, to commit one or more of the criminal acts alleged in the Indictment.

JURY INSTRUCTION NO. 20

Intent to Distribute/Specific Intent

The government must prove beyond a reasonable doubt that one or more members of the conspiracy possessed controlled substances intending to distribute those substances.

To have the “intent to distribute” means to have in mind or to plan in some way to deliver or transfer possession or control over a quantity of controlled substances to someone else.

The intent which the government must prove is “specific intent.”

Specific intent means more than the general intent to do something.

To establish specific intent, the government must prove one or more members of the conspiracy knowingly possessed controlled substances with intent to distribute those substances.

Intent ordinarily may not be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind. However, you may infer the intent of the defendant from all of the facts and circumstances shown by the evidence.

JURY INSTRUCTION NO. 21

Knowingly

An act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason. The purpose of the word "knowingly" is to insure that no one will be convicted for an act done because of mistake, or accident, or other innocent reason. Intent and motive should never be confused. Motive is what prompts a person to act, or fail to act. Intent refers only to the state of mind with which the act is done or omitted.

Personal advancement and financial gain are two well recognized motives for much of human conduct. These laudable motives may prompt one person to voluntary acts of good, another to voluntary acts of crime.

Good motive alone is never a defense where the act done or omitted is a crime. So the motive of the accused is immaterial except insofar as evidence of motive may aid determination of state of mind or intent.

JURY INSTRUCTION NO. 22

Date of Offense And Money Amount Normally Not Essential

In reaching your decision and making your determination as to the guilt or innocence of a defendant, you are instructed that the allegations in the indictment with reference to dates and amounts of money are not ordinarily considered to be material allegations. Reasonable variances between the dates or amounts of money alleged in the indictment and the date or amounts of money shown by the evidence with respect thereto need not be considered consequential by you in reaching your verdict.

JURY INSTRUCTION NO. 23

Place of the Offense

To find the defendant guilty of the conspiracy charge, you must find that either the conspiratorial agreement or one or more of the acts undertaken by the defendant in furtherance of the conspiracy's purposes occurred within this Court's jurisdiction, which is the Northern District of Ohio, Western Division. It is not necessary for the government to prove that all such acts took place here.

Unlike all the other elements of the conspiracy charge, the government needs to prove the place either of agreement or an act in furtherance of the conspiracy only by a preponderance of the evidence.

To prove something by a preponderance of the evidence, the government only has to convince you that something is more likely so than not so.

This lower burden of proof applies only to the place of the conspiratorial agreement or an act in furtherance of the conspiracy. Everything else that the government must prove must be proven beyond a reasonable doubt before you can return a guilty verdict.

JURY INSTRUCTION NO. 24

Drug Quantities

If you find the defendant guilty of conspiracy you must unanimously determine the amount of controlled substance he conspired to possess with intent to distribute. You may find the defendant responsible only for: 1) the quantities that the defendant controlled; and 2) the quantities that were within the scope of the criminal activity that he undertook.

A Special Verdict ^S Form ^S has ^{vr} been prepared which sets forth the controlled substance ranges provided by law.

There has been testimony regarding the quantities of controlled substances involved in this case^s as to both metric system weights (gram, kilograms) and the standard American system weights (ounces, pounds). You are instructed that the following conversions apply:

One kilogram = 2.2 pounds

One kilogram = 1,000 grams

One ounce = 28.35 grams

One pound = 453.59 grams

JURY INSTRUCTION NO. 25

Deliberations

Before you begin deliberating, choose someone to be your foreperson to help to guide your discussions and speak on your behalf in court.

A foreperson has no greater voice or influence than any other juror, and a foreperson's opinion and vote are no more important than those of any other member of the jury.

Consider and discuss the case only when all twelve of you are present together in the jury room. Do not discuss it outside the jury room with anyone. Do not discuss it unless all jurors are present.

While deliberating, do not talk to the clerk, or to me, or anyone else except each other about the case. If you have any questions or messages, write them down and give them to the clerk, who will give them to me. Questions should be signed by the foreperson.

I will respond as quickly as I can, but it may take some time to do so.

Do not ever tell anyone or otherwise disclose how you stand on your votes. For example, do not write down or tell anyone that you are split 6-6, or 8-4, or whatever your vote happens to be. That must remain secret until you are finished.

From now until you have reached your verdicts, you may determine the schedule for your deliberations. Please tell the clerk when you are taking recesses or adjourning for the day and when you will be resuming your deliberations.

While in recess or adjournment, do not discuss the case with anyone, and take nothing relating to the case from the jury room. Do not engage in any outside research or otherwise try to find out more about the case. Do not read, listen to or watch accounts about the case.

JURY INSTRUCTION NO. 26

Unanimous Verdict

Your verdicts, whether guilty or not guilty, and your verdict^s as to drug quantities, must be unanimous: to find the defendant guilty of a charge, every one of you must agree that the government has overcome the presumption of innocence and met its burden of proof with evidence that proves his guilt beyond a reasonable doubt.

Likewise, to find the defendant not guilty, every one of you must agree that the government has failed to prove the defendant guilty beyond a reasonable doubt.

Either way, guilty or not guilty, your verdict must be unanimous.

JURY INSTRUCTION NO. 27

Duty to Deliberate

Now that the case is being given to you to decide, it is your duty to talk with each other about the evidence and make every reasonable effort to reach unanimous agreement.

Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what each other has to say.

Try your best to work out your differences.

Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that – your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

Remember that you are judges – judges of the facts. You are not partisans or advocates for one side or the other, or for a particular outcome.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

Listen carefully to what the other jurors have to say, and then decide for yourself if the government has proved the defendant under consideration guilty beyond a reasonable doubt.

JURY INSTRUCTION NO. 28

Punishment

In reaching your verdict as to whether the government has proven the defendant guilty beyond a reasonable doubt or has failed to do so, you must not consider the consequences of your verdict.

JURY INSTRUCTION NO. 29

Verdict Forms

I have prepared verdict forms that you should use to record your verdicts.:

[Read Forms]

If you unanimously decide that the government has proved its charge against the defendant beyond a reasonable doubt, have your foreperson mark the appropriate place on the form. If you decide that the government has not proved the charge against the defendant beyond a reasonable doubt, have your foreperson mark the appropriate place on the form or forms.

Each of you should then sign the form or forms.

Then notify the clerk that you have reached your verdicts. Hand the verdicts to her.

Before your verdicts are read in court, do not disclose them to anyone.