

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LaDARRON DEONDRE PICKENS,
a/k/a "Deondre Pickens,"

Defendant.

No. 09-CR-10-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will 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. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

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. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NO. 3

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. 4

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the 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 the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties 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.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents and other evidence were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. 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. 7

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

INSTRUCTION NO. 8

You have also heard “other acts” evidence that the defendant was previously convicted of possession with intent to distribute marijuana. You may not use this “other acts” evidence to decide whether the defendant carried out the acts involved in the crime charged in the Indictment. In order to consider “other acts” evidence at all, you must first unanimously find, beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crime charged in the Indictment. If you make this finding, then you may consider the “other acts” evidence to decide the defendant’s intent, knowledge or lack of mistake. “Other acts” evidence must be proven by a preponderance of the evidence; that is, you must find that the evidence is more likely true than not true. This is a lower standard of proof than proof beyond a reasonable doubt. If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proven by a preponderance of the evidence, then you must disregard such evidence.

Remember, even if you find that the defendant may have committed other acts in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed other acts in the past. The defendant is on trial only for the crime charged, and you may consider the evidence of “other acts” only on the issue of his intent, knowledge or lack of mistake.

INSTRUCTION NO. 9

You have heard testimony that the defendant made statements to law enforcement officers in this case. 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 the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NO. 10

You have heard testimony from one or more persons described as experts. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state his opinions on matters in that field and may also state the reasons for his 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 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. 11

The government and the defendant have stipulated—that is, they have agreed that certain facts are as counsel have stated. You must, therefore, treat those facts as having been proved.

INSTRUCTION NO. 12

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdict, in the same condition as it was received by you.

INSTRUCTION NO. 13

The Indictment in this case charges the defendant with one offense.

The Indictment charges that, on or about February 5, 2009, in the Northern District of Iowa and elsewhere, the defendant, LaDarron Deondre Pickens, a/k/a Deondre Pickens, knowingly and intentionally possessed with intent to distribute 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana, a Schedule I controlled substance.

The defendant has pleaded not guilty to this 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 the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 14

The Indictment charges the defendant with possession with intent to distribute a mixture or substance containing a detectable amount of marijuana. This crime has three essential elements which are:

One, on or about February 5, 2009, the defendant was in possession of a mixture or substance containing a detectable amount of marijuana;

Two, the defendant knew that he was in possession of a mixture or substance containing a detectable amount of marijuana; and

Three, the defendant intended to distribute some or all of a mixture or substance containing a detectable amount of marijuana to another person.

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

INSTRUCTION NO. 15

The term “distribute” means to deliver a controlled substance to the possession of another person. The term “deliver” means the actual or attempted transfer of a controlled substance to the possession of another person. No consideration for the delivery need exist, and it is not necessary that money or anything of value change hands. The law is directed at the act of “distribution” of a controlled substance and does not concern itself with any need for a “sale” to occur.

INSTRUCTION NO. 16

“Possession” is an element of the offense charged in the Indictment. The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing at a given time is then in actual possession of it.

A person who, although not in actual possession, has both the power and intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word “possession” has been used in these instructions, it includes “actual” as well as “constructive” possession and also “sole” as well as “joint” possession.

INSTRUCTION NO. 17

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

I instruct you that possession of a large quantity of marijuana supports an inference of an intent to distribute. Thus, in determining whether the defendant possessed marijuana with the intent to distribute, you should consider whether the defendant knowingly and intentionally possessed a large quantity of marijuana. If you believe that he did, then you may infer that he had the intent to distribute.

INSTRUCTION NO. 18

In determining whether the defendant is guilty of the offense charged in the Indictment, the government is not required to prove that the amount or quantity of controlled substances was as charged in the Indictment. The government need only prove beyond a reasonable doubt that there was some measurable amount of the controlled substances involved.

If you find the defendant guilty of the offense charged in the Indictment, you will need to determine whether the mixture or substance containing a detectable amount of marijuana was: (1) 100 kilograms or more; (2) 50 kilograms or more but less than 100 kilograms; or (3) less than 50 kilograms.

The burden of proof is on the government to establish quantity beyond a reasonable doubt.

INSTRUCTION NO. 19

You are instructed as a matter of law that marijuana is a Schedule I controlled substance. You must ascertain whether or not the substance in question was a mixture or substance containing a detectable amount of marijuana. In so doing, you may consider all the evidence in the case which may aid in the determination of that issue.

INSTRUCTION NO. 20

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. 21

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done “knowingly” if the defendant is aware of the act and does not act through ignorance, mistake or accident. You may consider evidence of the defendant’s words, acts or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 22

You will note that the Indictment charges that the offense was committed “on or about” a certain date. The government need not prove with certainty the exact date or the exact time period of the offense charged. It is sufficient if the evidence establishes that the offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NO. 23

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 24

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 an agreement if you can do so without violence to individual judgment, because your 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 Court Security Officer, 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.

(CONTINUED)

INSTRUCTION NO. 24 (Cont'd)

Fifth, 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 might be—that is entirely for you to decide.

INSTRUCTION NO. 25

Attached to these instructions you will find the Verdict Form and Interrogatory Form. The Verdict Form and Interrogatory Form are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Form and Interrogatory Form must be the unanimous decisions of the jury.

You will take the Verdict Form and Interrogatory Form to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Form and Interrogatory Form, your foreperson will fill out the Verdict Form and Interrogatory Form, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Form and Interrogatory Form in accord with the evidence and these instructions.

May 5, 2009
Date



Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LaDARRON DEONDRE PICKENS,
a/k/a "Deondre Pickens,"

Defendant.

No. 09-CR-10-LRR

VERDICT FORM

We, the Jury, unanimously find the defendant, LaDarron Deondre Pickens,
of the offense charged in the Indictment.

Not Guilty/Guilty

Note: If you unanimously find the defendant, LaDarron Deondre Pickens, not guilty of the above crime, have your foreperson write "not guilty" in the above blank space, and sign and date this Verdict Form. This completes your deliberations.

If you unanimously and beyond a reasonable doubt find the defendant, LaDarron Deondre Pickens, guilty of the above crime, have your foreperson write "guilty" in the above blank space, then sign and date this Verdict Form. Then, go on to answer the Interrogatory Form.

FOREPERSON

DATE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

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a/k/a "Deondre Pickens,"

Defendant.

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INTERROGATORY FORM

If you found the defendant guilty, please answer the following question, then have your foreperson sign and date this Interrogatory Form.

Question: In the event you unanimously found, beyond a reasonable doubt, the defendant guilty of the crime charged in the Indictment, answer this Question by placing a check mark (✓) on the one following space that reflects the quantity of marijuana involved in the offense:

_____ 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana.

_____ less than 100 kilograms, but more than a 50 kilograms, of a mixture or substance containing a detectable amount of marijuana.

_____ 50 kilograms or less of a mixture or substance containing a detectable amount of marijuana.

FOREPERSON

DATE