

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALI ABDUL GHANI KHALEEL,

Defendant.

No. 11-CR-103-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 and the documents and other things received as exhibits.

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 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 witnesses 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.”

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 heard an audio recording of a conversation. That conversation was legally recorded, and you may consider the recording just like any other evidence.

You were also provided with a transcript of that conversation. That transcript also undertakes to identify the speakers engaged in the conversation. You were permitted to have the transcript for the limited purpose of helping you follow the conversation as you listened to the audio recording, and also to help you keep track of the speakers. Differences in meaning between what you heard in the recording and read in the transcript may be caused by such things as the inflection in a speaker's voice. It is what you heard, however, and not what you read, that is the evidence.

You are specifically instructed that whether the transcript correctly or incorrectly reflects the conversation or the identities of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcript, and upon your own examination of the transcript in relation to what you heard on the audio recording. If you decide that the transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

INSTRUCTION NO. 9

You have heard testimony that the defendant made statements to law enforcement.

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 of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NO. 10

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 you should leave the exhibits in the jury room in the same condition as they were received by you.

INSTRUCTION NO. 11

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

Expert testimony should be considered just like any other testimony. You may accept it 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. 12

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 13

The Indictment in this case charges that, on or about April 7, 2011, in the Northern District of Iowa, the defendant knowingly and intentionally possessed with intent to distribute or aided and abetted the possession with intent to distribute the following: (1) actual (pure) methamphetamine, a Schedule II controlled substance; (2) a mixture or substance containing a detectable amount of cocaine, a Schedule II controlled substance; and (3) a mixture or substance containing a detectable amount of marijuana, a Schedule I controlled substance.

The defendant has pleaded not guilty to this crime.

The Indictment is simply the document that formally charges the defendant with the crime for which he is on trial. The Indictment is not evidence. You must presume the defendant to be innocent at this stage in the proceedings. Thus, the trial of the defendant begins with a clean slate 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. Instead, the burden of proof remains on the government throughout the trial. 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 defendant may be found guilty of the offense charged in the Indictment under one of the following two alternatives: (1) the defendant possessed with intent to distribute a controlled substance; and (2) the defendant aided and abetted the commission of possession with intent to distribute a controlled substance.

***First Alternative:
Possession with Intent to Distribute***

The crime of possession with intent to distribute a controlled substance, as charged in the Indictment, has three elements, which are:

One, on or about April 7, 2011, the defendant was in possession of a controlled substance;

Two, the defendant knew that he was in possession of a controlled substance; and

Three, the defendant intended to distribute some or all of the controlled substance to another person.

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

***Second Alternative:
Aiding and Abetting the Commission of Possession with Intent to Distribute***

The defendant may also be found guilty of the offense charged in the Indictment even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of the offense.

(CONTINUED)

INSTRUCTION NO. 14 (Cont'd)

In order to have aided and abetted the commission of possession with intent to distribute a controlled substance, the defendant must, before or at the time the crime was committed:

- (1) have known that possession with intent to distribute a controlled substance was being committed or going to be committed; and
- (2) have knowingly acted in some way for the purpose of causing, encouraging or aiding the commission of possession with intent to distribute a controlled substance.

For you to find the defendant guilty of possession with intent to distribute a controlled substance by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the elements of possession with intent to distribute a controlled substance were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

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 become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NO. 15

The Indictment charges the defendant with possession with intent to distribute or aiding and abetting the possession with intent to distribute three different controlled substances: methamphetamine, cocaine and marijuana. It is not necessary for the government to prove that the defendant possessed with intent to distribute or aided and abetted the possession with intent to distribute all of those controlled substances. It would be sufficient if the government proves, beyond a reasonable doubt, that the defendant possessed with intent to distribute or aided and abetted the possession with intent to distribute one of those controlled substances. In that event, to return a verdict of guilty, you must unanimously agree which of the three controlled substances the defendant possessed with intent to distribute or aided and abetted the possession with intent to distribute. If you are unable to unanimously agree, you cannot find the defendant guilty of the crime charged in the Indictment.

INSTRUCTION NO. 16

You are instructed as a matter of law that methamphetamine and cocaine are Schedule II controlled substances and marijuana is a Schedule I controlled substance. You must ascertain whether the substances in question were methamphetamine, cocaine and marijuana. In so doing, you may consider all of the evidence in the case which may aid in the determination of that issue.

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 the controlled substances was as charged in the Indictment. The government need only prove beyond a reasonable doubt that there was a detectable amount of methamphetamine, cocaine and/or marijuana.

In determining whether the defendant is guilty of the offense charged in the Indictment, the government is not required to prove that the defendant knew the substances he possessed were methamphetamine, cocaine and/or marijuana. The government need only prove that the defendant knew he possessed a controlled substance.

If you find the defendant guilty of possession with intent to distribute or aiding and abetting the commission of possession with intent to distribute a mixture or substance containing a detectable amount of methamphetamine, you will need to determine whether the quantity of actual (pure) methamphetamine was: (1) less than 5 grams; or (2) 5 grams or more.

The burden of proof is on the government to establish the quantity beyond a reasonable doubt. For your information, one gram equals 1,000 milligrams, one ounce equals 28.35 grams, one pound equals 452.6 grams and one kilogram equals 1,000 grams.

INSTRUCTION NO. 17

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. 18

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 the 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. 19

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 previously mentioned, 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 a controlled substance supports an inference of an intent to distribute. Thus, in determining whether the defendant possessed a controlled substance with the intent to distribute, you should consider whether the defendant knowingly and intentionally possessed a large quantity of the controlled substance. If you believe that he did, then you may, but are not required to, infer that he had the intent to distribute.

INSTRUCTION NO. 20

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

INSTRUCTION NO. 21

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 of the offense charged. It is sufficient if the evidence establishes that the offense occurred within a reasonable time of the date alleged in the Indictment.

INSTRUCTION NO. 22

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. 23

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 your 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.

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. 24

Attached to these instructions you will find the Verdict Form and Interrogatory Form. These 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. Your foreperson should place the signed Verdict Form and Interrogatory Form in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning 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.

August 31, 2012
Date

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