

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

QUINTEL PHILLIPS,

Defendant.

No. 11-CR-2040-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 verdicts 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 just verdicts, 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 stipulations of the parties and 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

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. 6

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. 7

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. 8

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.

You have heard evidence that certain witnesses were once convicted of a crime. You may use that evidence only to help you decide whether to believe these witnesses and how much weight to give their testimony.

You have heard evidence that a witness has received a promise from the government that his testimony will not be used against him in a criminal case. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by the government's promise is for you to determine.

INSTRUCTION NO. 9

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

INSTRUCTION NO. 10

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. 11

You have heard testimony that the defendant made a statement to law enforcement.
It is for you to decide:

First, whether the defendant made the statement, and

Second, if so, how much weight you should give to it.

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statement may have been made.

INSTRUCTION NO. 12

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. 13

The Indictment in this case charges the defendant with six separate crimes.

Under Count 1, the Indictment charges that, on or about February 23, 2011, in the Northern District of Iowa, the defendant knowingly and intentionally distributed a mixture or substance containing a detectable amount of marijuana, a Schedule I controlled substance, within 1,000 feet of the real property comprising a school.

Under Count 2, the Indictment charges that, on or about March 3, 2011, in the Northern District of Iowa, the defendant knowingly and intentionally possessed with the intent to distribute a mixture or substance containing a detectable amount of marijuana, a Schedule I controlled substance, within 1,000 feet of the real property comprising a school.

Under Count 3, the Indictment charges that, from about February 23, 2011, through about March 3, 2011, in the Northern District of Iowa, the defendant knowingly possessed a firearm in furtherance of a drug trafficking crime.

Under Count 4, the Indictment charges that, on or about March 3, 2011, in the Northern District of Iowa, the defendant knowingly possessed a firearm while being an unlawful user of a controlled substance and/or after having previously been convicted of a crime punishable by imprisonment for a term exceeding one year.

Under Count 5, the Indictment charges that, on or about January 9, 2012, in the Northern District of Iowa, the defendant knowingly attempted to intimidate, threaten and corruptly persuade another person, RD, by attempting to communicate to RD that RD was a "mothafuckin' snitch ass bitch," or words to that effect, with the intent to influence, delay and prevent the testimony of RD in an official proceeding in the Northern District of Iowa, to wit: the criminal trial in *United States v. Quintel Phillips*, Case Number 11-CR-2040.

(CONTINUED)

INSTRUCTION NO. 13 (Cont'd)

Under Count 6, the Indictment charges that, from about January 20, 2012, through about January 21, 2012, in the Northern District of Iowa, the defendant knowingly intimidated, threatened and corruptly persuaded another person, RV, by communicating to RV that “mothafuckers know where you live” and “somebody gonna kill your ass,” or words to that effect, with the intent to influence, delay and prevent the testimony of RV in an official proceeding in the Northern District of Iowa, to wit: the criminal trial in *United States v. Quintel Phillips*, Case Number 11-CR-2040.

The defendant has pleaded not guilty to each of those charges.

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.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon the 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 verdicts.

INSTRUCTION NO. 14

The crime of distributing marijuana, as charged in Count 1 of the Indictment, has two elements, which are:

One, on or about February 23, 2011, the defendant intentionally transferred marijuana to another person; and

Two, at the time of the transfer, the defendant knew that it was marijuana.

If both of these elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1; otherwise, you must find the defendant not guilty of the crime charged under Count 1.

INSTRUCTION NO. 15

The crime of possession of marijuana with intent to distribute, as charged in Count 2 of the Indictment, has three elements, which are:

One, on or about March 3, 2011, the defendant was in possession of marijuana;

Two, the defendant knew that he was in possession of marijuana; and

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

If each of these elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 2; otherwise, you must find the defendant not guilty of the crime charged under Count 2.

INSTRUCTION NO. 16

You are instructed as a matter of law that marijuana is a Schedule I controlled substance. You must ascertain whether or not the substances in question as to Counts 1 and 2 were marijuana. In doing so, you may consider all the evidence in the case which may aid in the determination of that issue.

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

If you find the defendant guilty of one or both of the offenses charged in Counts 1 and 2, you must determine whether the government has proved beyond a reasonable doubt that the location at which the distribution of marijuana or possession with intent to distribute marijuana took place was within 1,000 feet of the real property comprising a school. The 1,000-foot zone can be measured in a straight line from the school irrespective of actual pedestrian travel routes. The government does not have to prove that the defendant agreed, knew or intended that the offense would take place within 1,000 feet of a school.

INSTRUCTION NO. 19

The crime of possessing a firearm in furtherance of a drug trafficking crime, as charged in Count 3 of the Indictment, has two elements, which are:

One, the defendant committed one or both of the following drug trafficking crimes:

- (A) distribution of marijuana, as charged in Count 1 of the Indictment; or
- (B) possession of marijuana with intent to distribute, as charged in Count 2 of the Indictment; and

Two, the defendant knowingly possessed a firearm, that is, a Taurus .38 caliber special revolver serial number AN25409, in furtherance of one or both of those drug trafficking crimes.

The phrase “in furtherance of” should be given its plain meaning, that is, the act of furthering, advancing or helping forward. The phrase “in furtherance of” is a requirement that the defendant possess the firearm with the intent that it advance, assist or help commit the crime, not that it actually did so.

If both of these elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 3; otherwise, you must find the defendant not guilty of the crime charged under Count 3.

INSTRUCTION NO. 20

The crime of being a drug user and/or felon in possession of a firearm, as charged in Count 4 of the Indictment, has three elements, which are:

One, on or about March 3, 2011, the defendant knowingly possessed a firearm, that is, a Taurus .38 caliber special revolver serial number AN25409;

Two, at the time the defendant possessed the firearm, he:

- (A) was an unlawful user of a controlled substance, that is, marijuana; or
- (B) had previously been convicted of a crime punishable by imprisonment for a term exceeding one year; or
- (C) both; and

Three, the firearm was transported across a state line at some time during or before the defendant possessed it.

You are instructed that the government and the defendant have stipulated, that is, agreed that the defendant was an unlawful user of marijuana on March 3, 2011. You are further instructed that marijuana is a controlled substance. In addition, the government and the defendant have stipulated that the defendant has been convicted of a crime punishable by imprisonment for more than one year under the laws of the State of Iowa. Therefore, you must consider the second element as proven.

If you have found beyond a reasonable doubt that the firearm in question was manufactured in a state other than Iowa and that the defendant possessed the firearm in the State of Iowa, then you may, but are not required to, find that it was transported across a state line.

If each of these elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 4; otherwise, you must find the defendant not guilty of the crime charged under Count 4.

INSTRUCTION NO. 21

You are instructed that, for purposes of considering Counts 3 and 4, the term “firearm” means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

INSTRUCTION NO. 22

It is not necessary for the government to prove that the defendant knew that the firearm charged in the Indictment had traveled in interstate commerce, that he personally transported the firearm in interstate commerce or that he intended to violate a particular statute. Likewise, it is not necessary for the government to prove that the defendant knew that it was illegal to have the firearm in his possession within the meaning of the law. Nor is it necessary for the government to prove who owned the firearm at any time. The statutes speak in terms of possession, not ownership.

INSTRUCTION NO. 23

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. 24

The crime of attempting to tamper with a witness, as charged in Count 5 of the Indictment, has two elements, which are:

One, on or about January 9, 2012, the defendant knowingly attempted to use intimidation, threats or corrupt persuasion against RD; and

Two, the defendant did so with intent to influence, delay or prevent the testimony of RD in an official proceeding.

If each of these elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 5; otherwise, you must find the defendant not guilty of the crime charged under Count 5.

INSTRUCTION NO. 25

The crime charged in Count 5 of the Indictment is an attempt to tamper with a witness. A person may be found guilty of an attempt if he intended to tamper with a witness and voluntarily and intentionally carried out some act which was a substantial step toward tampering with a witness.

A substantial step, as used in this instruction, must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer, viewing it in context, could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute.

INSTRUCTION NO. 26

The crime of tampering with a witness, as charged in Count 6 of the Indictment, has two elements, which are:

One, from about January 20, 2012, through about January 21, 2012, the defendant knowingly used intimidation, threats or corrupt persuasion against RV; and

Two, the defendant did so with intent to influence, delay or prevent the testimony of RV in an official proceeding.

If each of these elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 6; otherwise, you must find the defendant not guilty of the crime charged under Count 6.

INSTRUCTION NO. 27

You are further instructed that, for purposes of considering Counts 5 and 6, the following definitions apply:

To “intimidate” someone means intentionally to say or do something that would cause a person of ordinary sensibilities to be fearful of harm to himself or another. It is not necessary for the government to prove that the witness was actually frightened.

To “corruptly persuade” someone means to persuade with consciousness of wrongdoing.

To act with “intent to influence” the testimony of a person means to act for the purpose of getting the person to change or color or shade his or her testimony in some way. It is not necessary for the government to prove that the person’s testimony was, in fact, changed in any way.

An “official proceeding” includes any proceeding before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a judge of the United States Tax Court, a judge of the United States Court of Federal Claims or a federal grand jury. If you find the defendant guilty of one or both of the offenses charged in Counts 5 and 6, you must determine whether the government has proved beyond a reasonable doubt that the official proceeding involved in the count under consideration by you was a criminal trial.

INSTRUCTION NO. 28

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.

INSTRUCTION NO. 29

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. 30

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

INSTRUCTION NO. 31

You have heard evidence that the defendant committed drug-related offenses in the past. If you unanimously find this evidence is more likely true than not true, then you may use it to help you decide the issues of motive, intent and/or knowledge under Counts 1 and 2. "More likely true than not true" is a lower standard than proof beyond a reasonable doubt. You should give such evidence the weight and value you believe it is entitled to receive. If you find that it is not more likely true than not true, then you shall disregard it.

Remember, even if you find that the defendant may have committed similar 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 similar acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of prior bad acts only on the issues of motive, intent and/or knowledge under Counts 1 and 2.

INSTRUCTION NO. 32

You have heard audio recordings of conversations. These conversations were legally recorded, and you may consider the recordings just like any other evidence.

You were also provided with transcripts of these conversations. Those transcripts also undertake to identify the speakers engaged in the conversations. You were permitted to have the transcripts for the limited purpose of helping you follow the conversations as you listened to the audio recordings, and also helping you keep track of the speakers. Differences in meaning between what you heard in the recordings and read in the transcripts 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 transcripts correctly or incorrectly reflect the conversations or the identities of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcripts, and upon your own examination of the transcripts in relation to what you heard on the audio recordings. If you decide that the transcripts are in any respect incorrect or unreliable, you should disregard them to that extent.

INSTRUCTION NO. 33

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. 34

In conducting your deliberations and returning your verdicts, 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 each of your verdicts—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 verdicts.

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. 34 (Cont'd)

Fifth, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

INSTRUCTION NO. 35

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

You will take the Verdict Forms and Interrogatory Forms to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms and Interrogatory Forms, your foreperson will fill out the Verdict Forms and Interrogatory Forms, 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 Forms and Interrogatory Forms in accord with the evidence and these instructions.

February 29, 2012
Date

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