

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID A. BIENFANG and
CHRISTOPHER D. SCHMELTZER,

Defendant.

JURY INSTRUCTIONS

10-cr-130-wmc

I. INTRODUCTORY INSTRUCTIONS

Members of the jury, we are about to begin the trial of the case. Before it begins, I want to tell you how the trial will proceed and how you should conduct yourselves during the trial.

Your Duties as Jurors

As jurors, you have two duties. Your first duty is to decide the facts from the evidence that you will see and hear in this court. This is your job, not my job or anyone else's.

Your second duty will be to take the law that I will give you at the end of the case and apply it to the facts to decide if the government has proved the defendant guilty beyond a reasonable doubt.

You must perform these duties fairly and impartially. Do not let sympathy, prejudice, fear or public opinion influence you. Do not let any person's race, color, religion, national ancestry or gender influence you.

Nothing that I say or do during the trial is meant to indicate any opinion by me about what the facts are or about what your verdict should be.

The Criminal Charge

The charge against the defendants is in a document called an indictment. You will have a copy of the indictment during your deliberations.

The indictment in this case charges that each defendant unlawfully conspired to distribute marijuana and to possess marijuana with intent to distribute it. Each defendant has pleaded not guilty to this charge.

The indictment is simply the formal way of stating what crime the defendants are accused of committing. It is not evidence that either defendant is guilty and it should not raise even a suspicion of guilt.

Each Defendant is Presumed Innocent

Each defendant is presumed innocent of the charge. This presumption stays with each defendant throughout the case. It is not overcome unless from all the evidence in the case, you are convinced beyond a reasonable doubt that a defendant is guilty as charged.

The government has the burden of proving each defendant's guilt beyond a reasonable doubt. This burden stays with the government throughout the case. A defendant is never required to prove his innocence. He is not required to produce any evidence at all.

How the Trial Will Proceed

First, the Assistant United States Attorney will make an opening statement outlining the government's case. Immediately after, each defendant's attorney will make an opening statement outlining defendant's case. Keep in mind that what is said in opening statements is not evidence. It is simply a guide to help you understand what each party expects the evidence to show.

Second, after the opening statements, the government will introduce evidence in support of the charges. At the conclusion of the government's case, each defendant may introduce evidence. A defendant is not required to introduce any evidence or to call any witnesses. If either defendant introduces evidence, then the government may introduce rebuttal evidence.

Third, after the evidence is presented, the attorneys will make closing arguments explaining what they believe the evidence has shown and what inferences you should draw from the evidence. What the attorneys say in the closing arguments is not evidence. Because the government has the burden of proof, the Assistant United States Attorney has the right to give the first closing argument and to make a short rebuttal argument after the defendants' closing arguments.

Fourth, I will instruct you on the law that you are to apply in reaching your verdict.

Fifth, you will retire to the jury room and begin your deliberations.

The trial day will run from 9:00 a.m. until 5:30 p.m. You will have at least an hour for lunch and two additional short breaks, one in the morning and one in the afternoon.

Notetaking

The clerk will give each of you a notepad and pencil for taking notes. This does not mean you have to take notes; take them only if you want to and if you think that they will help you remember the evidence when you are deliberating. Do not let notetaking interfere with your important duties of listening carefully to all of the evidence and of evaluating the credibility of the witnesses. Just because someone has written something down, this does not mean that the written note is more accurate than

another juror's mental recollection of the same thing. No one of you is the "secretary" for the jury, responsible for recording evidence . Each of you is responsible for recalling the testimony and the other evidence.

Although you can see that this trial is being recorded by a court reporter, you should not expect to be able to use trial transcripts in your deliberations. You will have to rely on your own memories.

No Communication During the Trial

During recesses you should keep in mind the following instructions:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. The parties have a right to expect that you will keep an open mind throughout the trial. You should not reach any conclusions about this case until you have heard all of the evidence, you have heard the lawyers' closing arguments, you have received my instructions on the law, and you have retired to deliberate with the other members of the jury about your verdict.

I must warn you, in particular, against commenting about the trial in an e-mail or a blog or Twitter. There have been news accounts recently about cases that have had to be re-tried because a member of the jury communicated electronically about the case during the trial. You can imagine what this would mean in the cost of a re-trial, the inconvenience to your fellow jurors whose work would have gone for nothing and the stress experienced by the defendant.

Second, do not permit any third person to discuss the case in your presence. If anyone tries to talk to you despite your telling him not to, report that fact to the court as soon as you are able. Do not discuss the event with your fellow jurors or discuss with them any other fact that you believe you should bring to the attention of the court.

Third, although it is a normal human tendency to talk with people with whom one is thrown in contact, please do not talk to any of the parties or their attorneys or the witnesses. By this I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. This is the only way the parties can be sure of the absolute fairness and impartiality they are entitled to expect from you as jurors.

Fourth, do not read about the case on the internet, in newspapers, or listen to radio or television broadcasts about the trial. If a headline catches your eye, do not examine the article further. Media accounts may be inaccurate and may contain matters that are not proper for your consideration. You must base your verdict solely on the evidence produced in court.

Fifth, no matter how interested you may become in the facts of the case, you must not do any independent research, investigation or experimentation. Don't look up materials on the Internet or in other sources.

How To Consider the Evidence

You must make your decision in this case based only on the evidence that you see and hear in this court. Do not consider anything you may see or hear outside of court.

The evidence consists the testimony of the witnesses, the exhibits admitted in evidence and stipulations. A stipulation is an agreement between both sides that certain facts are true.

Sometimes during a trial I take judicial notice of certain facts that may be regarded as matters of common knowledge. You may accept those facts as proved, but you are not required to do so.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. If what a lawyer says is different from the evidence, the evidence is what

counts. The lawyers' questions and objections likewise are not evidence. A lawyer has a duty to object if he thinks a question is improper. If I sustain an objection to a question asked by a lawyer, then you must not speculate on what the answer might have been.

If during the trial I strike a witness's answer to a question or strike an exhibit from the record, or If I tell you to disregard something, then these things are not evidence and you may not consider them.

It is proper for a lawyer to interview any witness in preparation for trial.

Part of your job as jurors is to decide how believable each witness is, and how much weight to give each witness's testimony. Some factors you may consider are: the witness's age, intelligence, and memory; the witness's ability and opportunity to see, hear or know the things that the witness testified about; the witness's demeanor while testifying; whether the witness had any bias, prejudice or other reason to lie or to slant his or her testimony; inconsistent statements or conduct by the witness; and the believability of the witness's testimony in light of the other evidence presented. You may also consider any other factors that shed light on the believability of each witness's testimony.

Each defendant has an absolute right not to testify during this trial. You must not consider in any way the fact that he may choose not to testify. You should not even discuss it in your deliberations.

You must give separate consideration to each defendant. If evidence is admitted against one defendant but not the other, then you must be careful to limit your consideration of that evidence to the defendant against whom it was admitted.

Give the evidence whatever weight you believe it deserves. Use your common sense in weighing the evidence, and consider the evidence in light of your own every day experience. You are allowed to draw reasonable inferences from facts. In other words, you may look at one fact and conclude from it that another fact exists. Any inferences you make must be reasonable and must be based on the evidence in the case.

You may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is evidence that, if you believe it, directly proves a fact. Circumstantial evidence is evidence that indirectly proves a fact.

For example, direct evidence that it rained last Friday would be testimony from a witness who tells you that she walked through the rainstorm. Circumstantial evidence that it rained last Friday would be testimony from a witness who saw other people’s wet umbrellas drying in the foyer that day.

You are to consider both direct and circumstantial evidence. The law does not say that one is better than the other. It is up to you to decide how much weight to give to any evidence, whether direct or circumstantial.