



Open Doors to Federal Courts 2006

Partners in Justice: An Independent Judiciary, a Fair-Minded Jury

Jury Instructions for *United States v. Daniel McPherson Case*¹

JUDGE:

Members of the Jury

Charge One: Introduction of the Final Charge – Province of the Court and the Jury

Now that you have heard all of the evidence that is to be received in this trial and each of the arguments of counsel, it becomes my duty to give you the final instructions of the Court as to the law that is applicable to this case. You should use these instructions to guide you in your decisions.

It is your duty as jurors to follow the law as stated in all of the instructions of the Court and to apply these rules of law to the facts as you find them to be from the evidence received during the trial.

You are not to single out any one instruction alone as stating the law, but must consider the instructions as a whole in reaching your decisions.

You were chosen as a juror for this trial in order to evaluate all of the evidence received and to decide each of the factual questions presented by the allegations brought by the government in the indictment and the plea of not guilty by the defendant.

In resolving the issues presented to you for decision in this trial you must not be persuaded by bias, prejudice, or sympathy for or against any of the parties to this case or by any public opinion.

Charge Two: Judging the Evidence

There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any reasonable and careful person would deal with any very important

¹ Adapted from: Federal Jury Practice and Instructions: Criminal 5th Ed. Volume 1A. Kevin O'Malley, et. al. (St. Paul, MN; West Group, 2000).

question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case.

Charge Three: Direct and Circumstantial Evidence

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person which asserts or claims to have actual knowledge of a fact, such as an eyewitness account. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence.

Charge Four: Inferences From the Evidence

Inferences are simply deductions or conclusions from which reason and common sense lead the jury to draw from the evidence received in the case.

Charge Five: Jury’s Recollection Controls

If any reference by the Court or by counsel to matters of testimony does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

Charge Six: Consider Only the Offense Charged

The defendant is not on trial for any act of any conduct not specifically charged in the indictment.

Charge Seven: Presumption of Innocence, Burden of Proof, and Reasonable Doubt

I instruct you that you must presume the Defendant Daniel McPherson, to be innocent of the crime charged. Thus the defendant, although accused of a crime in the indictment, begins the trial with a “clean slate”—with no evidence against him. The indictment is not evidence of any kind. The law permits nothing but legal evidence presented before the jury in court to be considered in support of any charge against the defendant. The presumption of innocence alone, therefore, is sufficient to acquit the Defendant Daniel McPherson.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The defendant is not even obligated to produce any evidence by cross-examining the witness for the government.

It is not required that the government proves guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense—the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

Unless the government proves, beyond a reasonable doubt, that Defendant McPherson has committed each and every element of the offense charged in the indictment, you must find Defendant Simmons not guilty of the offense. If the jury views the evidence in the case as reasonably permitting either of two conclusions—one of innocence, the other of guilt—the jury must, of course, adopt the conclusion of innocence.

Charge Eight: The Nature of the Offense Charged

The indictment charges that between January 1, 2005 and May 31, 2006, in the District of [name of District, e.g., District of Maryland], the Defendant Daniel McPherson, possessed with intent to distribute, and distributed, for financial gain, not more than 50 kilograms, but not less than seven kilograms of marijuana in violation of 21 U.S.C.A. SS 841.

The has entered a plea of “not guilty” and has denied that he is guilty of the offense charged in the indictment.

Charge Nine: The Statute Defining the Offense Charged

Section 812(a)(b)(D) of Title 21 of the United States Code provides, in part, that:

SS 841. Prohibited Acts

1. Unlawful acts. Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

a. to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

b. Penalties. Except as otherwise provided in . . . [sections deleted], any person who violated subsection (a) of this section shall be sentenced as follows:

...

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight . . . shall be sentenced to a terms of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both.

Charge Ten: The Essential Elements of the Offense Charged

In order to sustain its burden of proof for the offense of possession, distribution, and possession with intent to distribute a controlled substance, specifically marijuana, as charged in the

indictment, the government must prove the following essential elements beyond a reasonable doubt:

- a) The Defendant Daniel McPherson,
- b) Distributed, dispensed, or possessed with intent to distribute a
- c) Controlled substance, specifically marijuana, and
- d) The amount of the controlled substance did not exceed 50 kilograms.

Charge Eleven: Effect of the Defendant's Failure to Testify

The defendant in a criminal case has an absolute right under our Constitution not to testify.

The fact that Defendant McPherson did not testify must not be discussed or considered in any way when deliberating and arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his privilege under the Constitution and did not testify.

Charge Twelve: Verdict; Election of Foreperson; Duty to Deliberate; Unanimity; Punishment; Form of Verdict; Communication with the Court

Upon retiring to your jury room to begin your deliberation, you must select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

Your verdict must represent the collective judgment of the jury.

In order to return a verdict, it is necessary that each juror agree to it. Your verdict, in other words, must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with one another with a view toward reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for himself and herself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and to change your opinion if you are convinced it is erroneous. Do not surrender your honest conviction, however, solely because of the opinion of your fellow jurors or for the mere purpose of thereby being able to return a unanimous verdict.

The punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the Court and should never be considered by the jury in any way in arriving at an impartial verdict as to the offense charged.

A form for the verdict has been prepared for your convenience.

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