

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Criminal Action No. 01-94 GMS
 v.)
)
 ALVIN DRUMMOND,)
)
 Defendant.)

PRELIMINARY INSTRUCTIONS

Members of the jury:

Now that you have been sworn, I will give you some preliminary instructions to guide you in your participation in the trial.

DUTY OF THE JURY

It will be your duty to find from the evidence what the facts are. You, and you alone, are the judges of the facts. You will then have to apply to those facts the law as I will give it to you. You must follow that law whether you agree with it or not. Nothing the court may say or do during the course of the trial is intended to indicate, or should be taken by you as indicating, what your verdict should be.

EVIDENCE

The evidence from which you will find the facts will consist of the testimony of witnesses, documents, and other things received into the record as exhibits, and any facts the lawyers agree or stipulate to or that the court may instruct you to find. Certain things are not evidence and must not be considered by you. I will list them for you now:

1. Statements, arguments, and questions by lawyers are not evidence.

2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

3. Testimony that the court has excluded or told you to disregard is not evidence and must not be considered.

4. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. I will give you further instructions on these as well as other matters at the end of the case, but keep mind that you may consider both kinds of evidence.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the case.

RULES FOR A CRIMINAL CASE

As you know, this is a criminal case. There are three basic rules about a criminal case that you must keep in mind.

First, a defendant is presumed innocent unless proven guilty. The indictment against the defendant brought by the government is only an accusation, nothing more. It is not proof of guilt or anything else. The defendant therefore starts out with a clean slate.

Second, the burden of proof is on the government until the very end of the case. The defendant has no burden to prove his or her innocence, or to present any evidence, or to testify. Since the defendant has the right to remain silent, the law prohibits you in arriving at your verdict from considering that the defendant may not have testified.

Third, the government must prove the defendant's guilt beyond a reasonable doubt. I will give you further instructions on this point later on, but bear in mind that in this respect a criminal case is different from a civil case.

SUMMARY OF APPLICABLE LAW

In this case the defendant is charged in an Indictment with having committed one offense on two different dates: distribution of more than five grams of a mixture or substance containing cocaine base which is a controlled substance. I will give you detailed instructions the law at the end of the case, and those instructions will control your deliberations and decision. But in order to help you follow the evidence, I will now give you a brief summary of the elements of the offense that the government must prove its case.

The government has alleged that the defendant committed the charged offense on two separate dates. These allegations occur in two separate counts. In Counts I and II respectively, the Indictment charges that on or about January 18, 2001 and December 7, 2000, in the State and Judicial District of Delaware, the defendant did knowingly distribute a mixture and substance containing cocaine base which is a controlled substance, and that this substance weighed in excess of five grams. The essential elements of this offense, each of which the government must prove beyond a reasonable doubt, before the defendant may be found guilty are:

First: That on or about January 18, 2001, in the State and Judicial District of Delaware, Alvin Drummond distributed a controlled substance;

Second: That he did so knowingly; and

Third: That the controlled substance was a mixture containing cocaine base that exceeded 5 grams in weight.

For Count II:

Before the defendant may be found guilty of this count, the government must prove, beyond a reasonable doubt, each of the essential elements of Count I, except that instead of proving that the offense occurred on January 18, 2001, the government must prove beyond a reasonable doubt that the defendant knowingly distributed the cocaine base on December 7, 2000.

CONDUCT OF THE JURY

Now, a few words about your conduct as jurors.

First, I instruct you that during the trial you are not to discuss the case with anyone or permit anyone to discuss it with you. Until you retire to the jury room at the end of the case to deliberate on your verdict, you simply are not to talk about this case. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator, or the like, remember it is because they are not supposed to talk with you nor you with them. In this way, any unwarranted and unnecessary suspicion about your fairness can be avoided. If anyone should try to talk to you about it, bring it to the court's attention promptly.

Second, do not read or listen to anything touching on this case in any way. If anyone should try to talk to you about it, bring it to the court's attention promptly.

Third, do not try to do any research or make any investigation about the case on your own.

Finally, do not form any opinion until all the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

During the trial, I will permit you to take notes. A word of caution is in order. There is always a tendency to attach undue importance to matters which one has written down. Some testimony which is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory and you should not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

So, if you do take notes, leave them in your seat at the end of the day, and my Deputy Clerk will collect them and return them to your seat the next day. And, remember that they are for your own personal use.

COURSE OF THE TRIAL

The trial will now begin. First, the government will make an opening statement, which is simply an outline to help you understand the evidence as it comes in. Next, the defendant's attorney may, but does not have to, make an opening statement. Opening statements are neither evidence nor arguments.

The government will then present its witnesses and counsel for defendant may cross-examine them. Following the government's case, the defendant may, if he [she] wishes, present witnesses whom the government may cross-examine. After all the evidence is in, the court will instruct you on the law, and the attorneys will present their closing arguments to summarize and interpret the evidence for your.

Finally, permit me to remind you of the schedule that I expect to maintain over the next 2 days of this trial. We will normally begin the day at 9:00 a.m. promptly. We will go until 1:00 p.m. and, after a one hour break for lunch, from 2:00 p.m. to 4:30 p.m. There will be a fifteen minute break at 11:00 a.m. and another fifteen break at 3:15 p.m. There is one exception of which I am aware that may occur. That is when the case is submitted to you for your deliberations. On that day the proceedings might last beyond 4:30 p.m. We will post a copy of this schedule for your convenience in the jury deliberation room.