

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:98CR-85-S

JAMES C. QUINN

DEFENDANT

COURT'S INSTRUCTIONS TO THE JURY

Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished you will go to the jury room and begin your deliberations.

It will be your duty to decide whether the United States has proved beyond a reasonable doubt the specific facts necessary to find the defendant guilty of the crimes charged in the superseding indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial; and you must not be influenced in any way by either sympathy or prejudice for or against the defendant or the United States.

You must also follow the law as I explain it to you whether you agree with that law or not; and you must follow all of my instructions as a whole. You may not single out, or disregard, any of the Court's instructions on the law.

The indictment or formal charge against any defendant is not evidence of guilt. The defendant is presumed by the law to be innocent. The law does not require a defendant to prove innocence or produce any evidence at all. This means that a defendant has no obligation to testify. Therefore, if a defendant does not testify during a trial, you may not draw any inference or suggestion of guilt from that fact, nor may you consider this in any way in reaching your verdicts. The United States has the burden of proving a defendant guilty beyond a reasonable doubt, and if it fails to do so you must find the defendant not guilty.

While the United States' burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the United States' proof exclude any "reasonable doubt" concerning a defendant's guilt.

A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

You must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses and the exhibits admitted in the record. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that the defendant is either guilty or not guilty. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Now, in saying that you must consider the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling.

In deciding how much of a witness' testimony to believe, I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth or a personal interest in the outcome of the case? Did the witness have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did the witness appear to understand the questions clearly and answer them directly?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony given before you during the trial.

However, a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that was simply an innocent lapse of memory or an intentional falsehood.

COUNT 1

Title 21, United States Code, Section 844(a) makes it a federal crime for anyone to possess a “controlled substance.” Cocaine base, or “crack,” is a “controlled substance within the meaning of the law.

The defendant can be found guilty of simple possession only if the following facts are proved beyond a reasonable doubt:

That on or about May 23, 1998, James C. Quinn knowingly and intentionally possessed in excess of five (5) grams of cocaine base as charged.

The parties have stipulated and agreed that the substance which was seized in this case is cocaine base in excess of five (5) grams.

COUNT 2

Title 21, United States Code, Section 841(a)(1), makes it a federal crime for anyone to possess a "controlled substance" with intent to distribute it.

Cocaine base, or "crack," is a "controlled substance" within the meaning of the law.

The defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

First: That on or about May 23, 1998, James C. Quinn knowingly and intentionally possessed cocaine base as charged; and

Second: That he possessed the substance with the intent to distribute it.

To "possess with intent to distribute" simply means to possess with intent to deliver or transfer possession of a controlled substance to another person, with or without any financial interest in the transaction.

The parties have stipulated and agreed that the substance which was seized in this case is cocaine base.

COUNT 3

Title 18, United States Code, Section 924(c)(1), makes it a separate federal crime for anyone to carry a firearm during and in relation to a drug trafficking crime.

The defendant can be found guilty of Count 3 only if all of the following facts are proved beyond a reasonable doubt:

First: That on or about May 23, 1998, James C. Quinn committed the drug trafficking crime charged in Count 2; and

Second: That during and in relation to that drug trafficking crime, he knowingly carried the firearm described in Count 3 of the superseding indictment.

The term “firearm” includes any weapon which is designed to expel a projectile by the action of an explosive. The crime charged in Count 3 and the definition of “firearm” do not include ammunition.

“Carrying” a firearm includes knowingly possessing and conveying a firearm in a vehicle. The phrase “during and in relation to a drug trafficking crime” means that the act of carrying the firearm had some relation to, or connection with, the drug trafficking crime.

If you have found the defendant not guilty as to Count 2, you must also find him not guilty as to Count 3.

COUNTS 4 AND 5

Title 18, United States Code, Section 922(g)(1) makes it a separate federal crime for a convicted felon to knowingly possess a firearm or ammunition, or both, in commerce or affecting commerce.

The defendant can be found guilty as to Count 4 only if all of the following facts are proved beyond a reasonable doubt:

- First: That on or about May 23, 1998, James C. Quinn possessed the firearm or ammunition, or both, described in Count 4 of the superseding indictment;
- Second: That prior to such possession, he had been convicted in a court of a felony; that is, a crime punishable by imprisonment for a term exceeding one year; and
- Third: That such possession was in or affecting interstate or foreign commerce.

The defendant can be found guilty as to Count 5 only if all of the following facts are proved beyond a reasonable doubt:

- First: That on or about June 11, 1998, James C. Quinn knowingly possessed the firearm or ammunition, or both, described in Count 5 of the superseding indictment;
- Second: That prior to such possession, he had been convicted in a court of a felony; that is, a crime punishable by imprisonment for a term exceeding one year; and
- Third: That such possession was in or affecting interstate or foreign commerce.

The parties have stipulated and agreed that on May 23, 1998 and June 11, 1998 James C. Quinn had previously been convicted in a court of a felony; that is, a crime punishable by imprisonment for a term exceeding one year.

The term "firearm" means any weapon which is designed to, or may readily be converted to, expel a projectile by the action of an explosive. The term "ammunition" means ammunition or cartridge cases or bullets designed for use in any firearm.

The phrase “in or affecting interstate or foreign commerce” means a commerce between any place in a state and any place outside of that state, including a foreign country. A firearm is possessed “in or affecting commerce” if the firearm has traveled across a state boundary line at any time, including before the defendant possessed the firearm.

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may also have sole possession or joint possession.

A person who has direct physical control of something on or around his person is then in actual possession of it.

A person who is not in actual possession, but who knowingly has both the power and the intention at a given time to exercise dominion and control over something, either alone or together with someone else, is in constructive possession of it.

If one person alone has possession of something, possession is sole. If two or more persons share possession, 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.

The parties have stipulated that the defendant is a convicted felon. You cannot consider this fact as evidence that the defendant committed the crimes charged in Counts 1, 2, or 3. Instead, evidence of his previous conviction of a crime may be considered by you in deciding whether you believe that the United States has proven one of the elements of the crime charged in Counts 4 and 5, that is, that on or about the date in question the defendant was a convicted felon.

You will note that the superseding indictment charges that the crimes were committed "on or about" certain dates. The United States does not have to prove with certainty the exact dates of the alleged crimes. It is sufficient if the United States proves beyond a reasonable doubt that the crimes were committed on dates reasonably near the dates alleged.

The word "knowingly," as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

A separate crime is charged in each count of the superseding indictment. Each charge and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not affect your verdict as to any other offense charged.

The defendant is on trial only for those specific offenses alleged in the superseding indictment. Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted the matter of punishment is for the Judge to determine.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, you are judges of the facts. Your only interest is to seek the truth from the evidence in the case.

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience.

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your foreperson fill in the verdict form, date and sign it, and then return to the courtroom.