

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
 v.) No. 08-00026-03, 04, 05-CR-W-FJG
)
 TROY R. SOLOMON,)
 CHRISTOPHER L. ELDER,)
 and)
 DELMON L. JOHNSON,)
)
 Defendants.)

GOVERNMENT'S PROPOSED VOIR DIRE QUESTIONS

The United States of America, by and through its attorneys, Beth Phillips, United States Attorney for the Western District of Missouri, and Rudolph R. Rhodes and James Curt Bohling, Assistant United States Attorneys, respectfully requests, pursuant to Rule 24(a)(2)(B) of the Federal Rules of Criminal Procedure, that this Honorable Court include the following questions in its examination of prospective jurors during voir dire in the trial of the above-entitled case.

1. In this matter, the Government is represented by Assistant United States Attorneys Rudolph R. Rhodes and Curt Bohling.

a. Does anyone here know Mr. Rhodes, Mr. Bohling, or the United States Attorney, Beth Phillips, or any other member of United States Attorney's Office staff?

b. Diversion Investigator Judi Watterson of the Drug Enforcement Administration and Financial Analyst Lori Nelson of the United States Attorney's office will be assisting Mr. Rhodes and Mr. Bohling in the presentation of this

case. Does anyone know Investigator Watterson? Ms. Nelson?

c. Troy Solomon, from Houston, Texas, is represented by his attorneys Chip B. Lewis, who is also from Houston, Texas. Does anyone know or recognize Mr. Lewis or the defendant Solomon?

d. Christopher Elder, from Houston, Texas, is represented by his attorney John Osgood. Does anyone know or recognize Mr. Osgood, or the defendant Elder?

e. Delmon Johnson, from Houston, Texas, is represented by his attorney Darren Fulcher. Does anyone know or recognize Mr. Fulcher, or the defendant Johnson?

2. The Government has charged that the defendants with crimes related to the illegal distribution of controlled substances by The Medicine Shoppe pharmacy in Belton, Missouri to defendants in Houston, Texas. Count One charges that from at least in or about August 2004 and continuing through October 2005, defendants conspired with each other and other people to illegally dispense and distribute hydrocodone and other controlled substances. Count Two charges defendant Solomon with conspiracy to commit money laundering. Counts Three through Twelve charge certain defendants with substantive counts of illegal distribution and dispensation of schedule III, IV, and V controlled substances. Does anyone have any knowledge whatsoever of these charges, or has anyone heard about this case before today? For those of you who have heard about the case, can you set aside anything you may have seen on TV or read in the paper, and make your decision only on the evidence presented here in this courtroom?

3. In order to prove the charges in this case the Government will present evidence. Much of the evidence in this case will come to you in the form of testimony from the witness stand. The Government may call several witnesses in this case [The Court is respectfully requested to read the Government's witness list]. Does anyone know or think they know any of these potential witnesses?

4. If you are chosen to serve as a juror in this case you must determine the believability of the witnesses. The court will instruct you on the type of factors or standards you should consider when making that determination. You should, however, use the same set of factors when determining the believability of each witness. Some of the witnesses in this case will be law enforcement officers, including agents from the Drug Enforcement Administration ("DEA"). Is there any member of the panel who would automatically believe or disbelieve a law enforcement officer's testimony solely because he or she is a federal law enforcement agent or a police officer, without applying the same set of factors that you would apply to the other witnesses?

5. This case was investigated primarily by the Drug Enforcement Administration. Has any member of the jury panel ever had a bad experience with a law enforcement officer? Would that bad experience cause you to judge a law enforcement officer's testimony differently than you would any other witness?

6. The law does not compel a defendant in a criminal case to take the witness stand and testify and no presumption of guilt may be drawn from the fact that a defendant does not testify. Similarly, the law never imposes on a defendant the duty of calling any witnesses or producing any evidence. A defendant who wants to testify, however, is a competent witness and

a defendant's testimony is to be judged in the same way as that of any other witness. Will any of you have any difficulty in applying these principles?

7. Have any of you ever served on a jury?
 - a. Was it a civil case or criminal case?
 - b. Did you reach a verdict in that case?
 - c. Did anyone serve as foreperson of the jury?
 - d. Is there anything about your prior jury service that would make you unable to be fair and impartial to both sides in this prosecution?
8. Have any of you ever served on a grand jury? Is there anything about that experience that would cause you difficulty in being a fair and impartial juror in this case?
9. Have any of you ever been employed by a law enforcement agency? Do any of you have a family member, relative or friend who has been employed in law enforcement?
10. Is anyone related to or close friends with an attorney who practices criminal law, or a judge?
 - a. Have they talked about cases or problems with you?
 - b. Is there anything about that relationship, or that you've learned from them that would make it difficult for you to be a fair and impartial juror in this criminal case?
11. Have you, or has any member of your family, or any close friend of yours, ever been the victim of a crime or been a witness in a criminal case?
 - a. Did you feel the police investigated your case as well as they could?
 - b. Did you feel you were treated fairly by police, the lawyers and the court?

12. Has any member of the jury panel or a member of your family or a close personal friend ever been charged with a drug-related offense?

- a. When?
- b. Where?
- c. Did you think you or they were unjustly accused?
- d. Did you feel you or they were treated fairly?

13. Has any member of the jury panel or a member of your family or a close personal friend ever been convicted of a felony offense?

- a. Of those convicted, are they currently, or have they in the past, been incarcerated?
- b. Did you feel they were they wrongly prosecuted?
- c. Did you feel the punishment was too severe?

14. Has any member of the jury panel or a member of your family or a close personal friend been charged with a crime that is now pending?

- a. Do you feel that person was wrongly arrested?
- b. Do you feel that person has been treated fairly by police, prosecutors, and the court system?

15. The Government must prove each defendant guilty beyond a reasonable doubt. Is there anyone who would hold the Government to proof beyond all doubt before finding the defendants guilty?

16. Would any of you acquit a defendant, even if convinced beyond a reasonable doubt of guilt, because you felt sympathy or felt that the defendant deserved a break, or were

unhappy with the way law enforcement investigated the case?

17. Do each of you understand that, if there is conflicting testimony during the trial about certain facts, it is your task to resolve the conflict and decide which facts deserve to be believed or disbelieved? Does everyone understand that if the Government's witnesses and a defendant's witnesses tell different versions of the same event, it is duty as jurors to decide who to believe or disbelieve?

18. You may hear testimony from witnesses who participated in the crimes that the defendants are charged with, and who have entered into plea agreements with the Government.

a. Does anybody feel that plea agreements are wrong, improper or somehow unfair?

b. Would you tend not to believe the testimony of an individual who has pleaded guilty pursuant to a plea agreement simply because that witness entered into that agreement?

c. Does anyone believe or feel it is wrong or improper for an individual to agree to plead guilty and cooperate with the Government to identify and testify about others involved in the criminal activity?

19. One or more of the witnesses in this case have received immunity from prosecution. Immunity agreements are lawful and proper. Do any of you believe that witnesses should not be offered immunity in exchange for cooperation and testimony?

20. Would you be able to be fair, impartial and unbiased in your evaluation of the testimony of witnesses who are convicted of offenses or have been granted immunity and have agreed to testify?

21. This case involves allegations that certain drugs were illegally distributed. The drugs at issue, including a pain killer known as hydrocodone that is sold under a number of brand names, including Lorcet, Lortab, and Vicodin, can be legally sold in certain circumstances, such as where they are issued pursuant to a valid prescription. Are you familiar with any of those drugs?

22. Has any member of the jury panel or a member of your family or a close personal friend ever been treated for, or suffered from addiction to, any illegal or prescription drug? Would anything about that experience make it difficult to be a juror on a case involving drug charges?

23. Has any member of the panel, or a relative or a close family friend ever become addicted to controlled pain medications prescribed by a doctor?

24. Has any member of the panel, a relative, or a close family friend ever gone to see a pain specialist to be treated for pain?

25. Do any of you believe that individuals should be permitted to acquire certain drugs regardless of whether they obtain a valid prescription or not?

26. Do you have any opinions about drug laws, including laws that govern requirements for prescriptions, that would make you unable to decide this case on the evidence presented and the law as stated by the Court?

27. Do any of you feel that the Government should not be involved in regulating prescription narcotics? To include:

- a. Doctors who prescribe;
- b. Pharmacists who dispense.

28. Do you have such negative feelings about drugs, including prescription pain killers, that you would be unable to evaluate the evidence fairly as to the defendants?

29. Your function as a juror is to decide questions of fact. However, the court will instruct you in the law to be applied in this case. You are bound by those instructions and cannot substitute your own notions of what you think the law is or should be.

a. Is there anyone who does not understand this principle?

b. Could everyone follow the law as instructed by the court even if you disagreed with it?

30. Do any of you hold any opinions about courts, defense attorneys, prosecutors or law enforcement officers that would prevent you from fairly considering and deciding this case solely on the evidence?

31. The issue of punishment is to be decided solely by the court and should not be considered by you in any way in arriving at your verdict. Does anyone think that would be a problem?

a. Do any of you feel that you would be unable to remove the consideration of punishment from your deliberations?

32. Does anyone hold any moral, religious, philosophical, political or personal beliefs that they should not judge another person? This is a criminal case and if selected as a juror, you will be asked to make a judgment.

33. Does anyone watch criminal justice shows on T.V. such as Law and Order, CSI, or Boston Legal?

a. Does anyone have expectations that this case would conform to what is on

TV? Those shows are fictional, and you should not expect that this trial will resemble what you've seen on TV.

b. If there is a conflict between what you hear in court versus what you've heard on TV, will you make your decision based on the evidence from this trial and not what you've seen on TV?

34. Has any member of the panel or any member of your family or any close personal friend ever been involved in any controversy or litigation of any kind with the United States Government?

35. It is expected that the trial in this case will last up to two weeks. Does anyone:

a. Have any scheduling conflict that could not be adjusted, that is significant enough that if you missed it, it would distract your attention from the trial at hand?

b. Suffer from any hearing impairment that makes it difficult for you to understand normal conversation?

c. Suffer from any medical ailment that requires you to take medication at regularly scheduled times?

d. Suffer from any medical condition that makes it difficult for you to sit for an extended period of time?

36. Has any past experience affected you in such a way so as to cause you doubt about your ability to sit as a fair and impartial juror? Is there anyone sitting here thinking that they could not be a fair, impartial and unbiased juror in this case for a reason that has yet to be asked?

Respectfully submitted,

Beth Phillips
United States Attorney

By /s/ **Rudolph R. Rhodes, IV**

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/s/ **James C. Bohling**

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 11, 2010, to the Electronic Filing System (CM/ECF) of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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