

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.)
)
DELMON L. JOHNSON,)
)
 Defendant.)

Case No. 08-00026-03/05-CR-WFJG

DEFENDANT DELMON JOHNSON’S PROPOSED VOIR DIRE

COMES NOW Defendant Delmon Johnson, by and through his attorneys, and respectfully submits the following proposed *voir dire* questions:

Background/Employment

1. Please state your place of birth, high school attended and post-high school education, if any.
2. Please state your current city of residence, occupation, marital status, and spouse's occupation, if applicable. What do you do at your job? Do you like your job? Why or why not? Does your spouse like his/her job?
3. Have any of you taken undergraduate courses in criminal justice or attended law school? Do any of you have experience in criminal law? Do you have any legal training whatsoever, including taking paralegal courses?
4. Does your spouse or a family member have experience in criminal law? If so, please state the general nature of that experience.
5. Have any of you, your close family or friends ever worked, either formally or informally, or applied for employment with, a law enforcement agency? By law enforcement agency, I mean organizations such as the Police Department, FBI., Circuit Attorney's or County Prosecutor's

Office, the United States Attorney's Office, CIA, IRS, ATF, Secret Service, Military Police, U.S. Customs Office, GSA Guards, private security firms, and the like?

6. How many of you (or your close friends or relatives) have been employed by any prison, jail, department of corrections, probation office, or parole agency?

7. Have any of you (or your close friends or relatives) ever worked for a federal, state or local court system in any capacity? Prior Jury/Litigation Experience

8. Has any member of the jury, a family member, or a close friend been involved in a criminal or civil trial at the state or federal level? If so, please give details. Were you/they satisfied with the outcome? Do you feel that the outcome was fair? Why or why not? What do you think of the job that your/their lawyer did? Did you serve as jury foreperson during trial? Is there anything about that experience that would affect your ability to sit as a juror in this case? Will you be able to put that past experience aside, consider the evidence in this case and apply the instructions the judge gives you in this case?

9. Has any jury member, or a family member, or a close friend ever had to testify in Court or at a deposition? What were the circumstances? How did you/they feel about testifying?

10. Do any of you, or your family or close friends work or have experience in the legal field or court system? Please tell us about your/their experience?

11. Has any member of the jury had any unpleasant associations with lawyers, judges or the courts? If so, would that experience interfere with your ability to decide this case?

Impartiality/Fairness to All Parties

12. This is a case alleging conspiracy to distribute and dispense controlled substances normally Hydrocodone, Alprazolam, and Promethazine; conspiracy to commit money laundering and actual distribution of controlled substances the defendants are charged, along with others, with

distributing between August 1 ,2004 and October 2005. Is there anything about the nature of these charges that would prevent your being fair and impartial to both the defendants and the government? How many of you feel that, because of the nature of the charges in this case, it might be difficult for you to sit as a juror? Does anyone have any knowledge whatsoever of the facts and circumstances of this case?

13. Many of us are concerned about drugs. As jurors in this case, you would be required to set aside your concerns and attitudes on general issues and decide this case independently and solely on the evidence and the instructions as the Court gives them to you. How many of you feel that you might find that difficult?

14. Do you know the defendants Troy R. Solomon, Christopher Elder, and/or Delmon Johnson? If so, how? Do you know or are any of you familiar with any of the defendants listed in the Indictment? If so, how?

15. This case is being prosecuted by the United States Attorney's Office for the Western District of Missouri? Have you or any family member had any contact with that office, United States Attorney Beth Philips, or assistant United States attorney Rudolph Rhodes or James C. Bowhling? If so, please describe. Do you have friends who work in the U.S. Attorney's Office?

16. DEA agents based here in Kansas City, Missouri Metropolitan area are expected to assist the government with its case and testify against the defendants. Have any of you or your family members had contact with the DEA's Overland Park, Kansas field office and its agents or employees? If so, please describe. Do any of you know Diversion Investigator Judi Watterson? If so, how?

17. The government is expected to call the following witnesses at trial: [Read government's proposed witness list.] Do any of you know any of these persons? If so, please describe the

nature of your relationship. The defendants are expected to call the following witnesses at trial:
[Read each defendant's proposed witness list.] Do any of you know any of these persons? If so, please describe the nature of your relationship.

18. Have any of you formed any opinions about either the prosecutor or defense attorneys which would affect you in deciding this case?

19. How many of you feel that law enforcement testimony is more likely to be believable or reliable than testimony by another witness?

20. If you had to choose who to believe, law enforcement or a witness called by a defendant, how many of you would be more likely to believe law enforcement because he or she is a part of a government agency?

21. How many of you agree that in general the government law enforcement don't make mistakes?

22. Do any of you now, or have you within the past five years, belonged to or participated in any crime prevention groups, such as neighborhood watch organizations, orange hat groups, or any other crime prevention groups?

23. How many of you have strong feelings about drugs and crime? Have you, a family member, or a close friend been a victim of a crime?

24. If the trial attracts local press attention, will each of you follow the court's instructions to refrain from viewing or reading any such reports in order to assure a fair trial based only on the evidence presented to you here in the courtroom?

25. What is your favorite television show? To what magazines do you subscribe? What is the last book you read?

26. Members of the jury panel, the defendants in this case are African-American. Given these facts, do each of you, looking within yourselves, have any doubt whatsoever that you could fairly and impartially judge the facts of this case? Is there anyone here based on individual life experiences that have a doubt about your ability to do that?

27. Earlier I mentioned to you the names of the DEA Investigators involved in this case. The government may call these DEA Investigators to testify at trial. Would you necessarily believe a federal agent's testimony more than you would a lay person's testimony?

28. This is a federal case that is being prosecuted by the United States Attorney's Office. Do any of you attach any special significance to the fact that this is charged as a federal, rather than state, crime? Would any of you tend to give more weight to the government's case just for that reason?

29. How many of you have family members or close friends who have bought or used illegal narcotics? Is there anything about their experience that will prevent your being fair and impartial in this case? Has anyone here been around dispensed controlled substances? Is there anything about your experience that will prevent your being fair and impartial in this case?

30. Is there any member of the jury who does not wish to sit on this jury for any reason whatsoever?

31. Does anyone have a reason that they would prefer not to sit, but wants to keep the reason private? Presumption of Innocence and Burden of Proof

32. Has anyone here been addicted to pain medication? Or a close friend or family member? Is there anything about your experience that will prevent your being fair and impartial in this case?

33. Does anyone know any of the attorneys for any defendant or know of anyone close to you that have been involved with any attorney?

34. Does anyone feel that if a person is charged with a crime, then they must be guilty of something?
35. Does anyone here have training, education or experience in the healthcare field in anyway?
36. Does anyone here watch more than 5 episodes a year of legal T.V. drama shows?
37. Does anyone here watch more than 5 episodes of medical T.V. drama shows?
38. Does anyone believe employees should be held automatically responsible for alleged wrong doing of his or her employer?
39. You will be instructed at the beginning and conclusion of trial that an indictment is simply an accusation. It is not evidence of anything. To the contrary, each defendant is presumed to be innocent. Thus each defendant, even though charged, begins the trial with no evidence against him. So the presumption of innocence alone is sufficient to find that each defendant is not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crimes charged. Is there anyone here who feels that any of the defendants should be required to prove his innocence?
40. Does anyone feel that the defendants are probably guilty just based on the fact that they have been charged with these crimes?
41. Do you believe that a person can be falsely accused of a crime?
42. Have any of you ever been a victim, or know somebody who has been a victim, of a false allegation?
43. There is no burden on any defendant to prove his innocence. Thus, each defendant has the right not to testify. That is, they can remain silent throughout this trial. Will any of you be disappointed if any or all defendants decide not to testify? Do any of you believe each defendant

has an obligation to prove his innocence? Would any of you consider a defendant's failure to testify as evidence of guilt?

44. Some co-defendants have pled guilty to a crime which arose out of the same events for which these defendants are on trial. You cannot consider those guilty pleas as any evidence of these defendants' guilt. Would any of you feel that because others pled guilty in this case, that these defendants must also be guilty?

45. There are three separate defendants on trial. You must give separate consideration to the evidence about each individual. Each defendant is entitled to be treated separately. Would any of you have trouble considering, separately, each crime charged against each individual defendant?

46. You will receive instructions at the end of trial that each of you must make your own conscientious decision regarding guilt or innocence, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Will each of you agree to make up your own minds individually and return only a verdict to which you agree? Will any of you join a verdict just because the majority of the other jurors favor it, regardless of your personal belief as to the facts?

47. The government has the burden at trial to prove each and every element of the charges beyond a reasonable doubt. That burden is much higher than proof by preponderance of the evidence or "more likely than not" which is the standard in civil cases. Does anyone think that the government's burden of proof -- beyond a reasonable doubt -- is too high a standard or an unfair standard?

48. Is there anyone here who would hesitate to vote "not guilty" if the government failed to prove its case?

Respectfully Submitted,

Fulcher & Brooks, LLC.

By: /s/ Darren E. Fulcher

Darren E. Fulcher, #49548

106 W. 11th Street, Suite 1540

Kansas City, Missouri 64105

816-474-1010 / 816-474-2011 Fax

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 14, 2010, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsels of record.

 /s/ Darren E. Fulcher

Darren E. Fulcher

Attorney for Defendant