

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

UNITED STATES OF AMERICA,)
)
)
)
Plaintiff,)
) Case No. 08-00026-03/05-CR-W-FJG
vs.)
)
DELMON L. JOHNSON,)
)
Defendant.)

Defendant Delmon Johnson’s Jury Instruction

Delmon Johnson, by Darren E. Fulcher, Attorney for Defendant, respectfully submits this proposed jury instruction. Defendant reserves the right to request further instructions should an issue arise during the trial that may necessitate such additional instructions.

Final Instruction

1. 9.08 Good Faith:

Defendant Delmon Johnson as an employee of a pharmacy may not be convicted when he distributes or dispenses controlled substances in good faith for a legitimate medical purpose and in the usual course of a professional practice.

When you consider the good faith defense, you should consider only whether the defendant believed he was acting in conformance with the law. The test is whether the defendant’s own thought process was one of good faith. That subjective thought process provides an absolute defense, even if you find that the defendant’s subjective beliefs were unreasonable or wrong.

When you consider the good faith defense, it is the defendant's belief that is important. It is the sincerity of his belief that determines if he acted in good faith.

If the defendant's belief is unreasonable, you may consider that in determining his sincerity of belief, but an unreasonable belief sincerely held is good faith.

Again, the burden is upon the government to prove, beyond a reasonable doubt that the defendant did not act in good faith.

Cheek v. United States, 498 U.S. 192, 203 (1991); United States v. Staples, 511 U.S. 600, 611 (1994); and United States v. Smith, 573 F.3d 639,649 (8th Cir 2009).

Respectfully Submitted,

Fulcher & Brooks, LLC.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 15, 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