

Pat asks Mia about her experience on a jury in a federal criminal drug trial

<http://www.youtube.com/watch?v=9KbZHpEMiK8>

So you just got back from jury duty?

Yes. It was interesting.

What kind of case was it?

It was a federal criminal drug case, for possession with intent to sell.

What evidence did the prosecution present?

The defendant was stopped for a defective tail light. The police officer found a bag of marijuana in his car.

Was there a warrant to search his car?

A search warrant was not presented in evidence.

Can you guess why the case was prosecuted in federal court instead of state court?

No, but the lawyer for the defendant started to try to argue the defendant had a prescription for medical use.

What do you mean by started?

The prosecutor cut him off with an objection that it was irrelevant, and the judge sustained the objection.

So if he had a prescription, would it be legal in this state?

Yes. This state approved medical use of marijuana with a prescription from a physician.

So do you think that might be why he was not prosecuted in state court, but in federal court instead?

Oh! I guess so.

Did the defense offer any evidence of a medical need for marijuana?

He tried to call a physician as a witness that he had cancer, and needed the marijuana to enable him to endure the effects of chemotherapy.

What do you mean by tried?

The prosecution objected it was irrelevant, and the judge sustained the objection, so the physician didn't get to testify.

How much marijuana was in the bag?

Less than a pound.

Does that seem like more than he needed for personal use?

The prosecution argued it was. I don't know how much somebody can use personally

Didn't you at least have a reasonable doubt that the amount proved it was for sale, and not for personal use?

I did, but then the prosecution called a witness who had shared a cell with the defendant, who testified the defendant had offered to sell him some marijuana when they both got out.

Did you find this confidential informant credible?

I wouldn't have if he had been the only witness, but his testimony seemed plausible. I thought the defendant might have been willing to sell some even if what was in the bag had been for his personal use.

Did the witness testify the sale was to be from what was in the bag?

No, I guessed it would have to have been from a different source, because he wouldn't get that bag back.

Didn't it seem odd that a cellmate would testify that he offered to buy marijuana, which would be a crime if he didn't have a medical condition and a prescription?

Oh! I didn't think of that. I guess he would have made a deal for his testimony, for a lighter sentence. He was a federal prisoner too, although both were in county jail.

Have you ever heard of testilying?

What is testilying?

It's lying by a prosecution witness when the prosecution knows he is lying, probably as part of a plea bargain.

Oh! I heard the defense lawyer try to use that word, but I thought he was just saying testifying, that I had heard him wrong.

Did the defense try to raise a doubt that the charge was constitutional?

Yes, but the judge cut him off, warning him he would hold him in contempt if he tried to make that argument, that the U.S. Supreme Court had ruled the law was constitutional.

Did the defense raise any other arguments about the constitutionality of the charge?

Yes, he tried to raise the argument that there was no search warrant, but the judge sustained an objection to that too, saying it did not affect a federal prosecution, since the arrest and search was not made by a federal agent.

Did the defense try to make any other arguments about the law on that or any other issues?

It seemed he wanted to, but was afraid the judge would punish him. I suspect he was a court-appointed lawyer, so he might have been afraid he wouldn't get any more cases.

Did that raise any doubts in your mind?

Yes, but I don't know if they were strong enough to acquit.

Have you ever heard of the case of Stettinius v U.S.?

It is an 1839 case that established the right in a criminal case to argue issues of law to the jury. Were such issues argued to your jury?

No. The judge wouldn't allow that.

Do you remember how alcohol was made illegal?

The Prohibition Amendment to the U.S. Constitution.

And what happened to the Prohibition Amendment?

It was repealed.

Do you know of any amendment to the U.S. Constitution that would authorize criminal prosecution for possession of marijuana?

No. Has such an amendment been adopted?

No, it hasn't. So, if it took an amendment to make it illegal to have alcohol, and there is no such amendment on marijuana, how can the federal government have authority to criminally prosecute anyone for possessing it?

I don't know. But I have heard something about the Commerce Clause.

Did the Commerce Clause exist when the Prohibition Amendment was adopted?

Yes.

Why would they have needed the Prohibition Amendment if the Commerce Clause could authorize criminal prosecution for possession of something?

Was there a later change in the way the Commerce Clause was interpreted?

Yes. The 1942 case of *Wickard v Filburn*, which sustained criminal prosecution for something that might substantially affect interstate commerce, even though it was not itself commerce, under the Necessary and Proper Clause, which the 1819 case of *McCulloch v Maryland* allowed to be interpreted loosely.

So the charge was based on a court case, and not on the original meaning of the Constitution?

Yes. So what was your verdict?

We convicted him.

How do you feel about that now?

We convicted an innocent man!

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