

A Criminal Case Moves Through Federal Court

(Revised 05/2020)

Narrator:

Welcome to the United States District Court, Eastern District of Washington
We will take you through how a criminal case goes through the Federal Court;
because of time limitations, the simulation has been simplified. You will be seeing an
Initial Appearance; Jury Selection; Witness Testimony during a Trial, and a
Sentencing Hearing.

A crime has been committed, and an individual arrested.

Purpose of Initial Appearance - Defendant understands their rights, what they are
charged with, possible penalties, and determines whether they should be released or
held in custody. Defendant is entitled to counsel if they cannot afford one the
Magistrate Judge will appoint one. Assistant United States Attorney represents the
Government.

Let us watch an Initial Appearance.

Scene 1: Initial Appearance (Pre-Trial)

(Magistrate Judge walks onto the screen as Courtroom Deputy speaks)

Courtroom Deputy: *(Stands)* Please rise. The United States District Court, for the
Eastern District of Washington, is now in session. The Honorable Magistrate Judge
(Judge full name) presiding.

Magistrate Judge: Please take your seats. Go ahead and call the case.

Courtroom Deputy: The Court calls case number 13 dash CR dash 26, United States of America v. Hall. Time set for initial appearance.

Magistrate Judge: *(To the US Attorney) (AUSA-1 name)*, you may proceed.

AUSA-1: Thank you, your Honor. May it please the court. By criminal complaint dated today the defendant, Alex Hall, has been charged with Possession with Intent to Distribute a Controlled Substance, MDMA, commonly known as Ecstasy, in or near schools. This is a violation of 21 United States Code, Sections 841 and 860. This count carries a maximum statutory penalty of not less than 1 year, nor more than 40 years imprisonment, a fine not to exceed 2 million dollars, a term of supervised release of at least 6 years, and a \$100 special assessment due on the date of sentencing. I note the statutory maximum doubles for crimes committed near schools.

Magistrate Judge: Mr./Ms. Hall. The purpose of this hearing is to advise you of the criminal complaint against you. This is not a date for the final resolution of this matter. You are not required to make a statement now or at any other time while charges are pending. Anything you do say can and will be used against you. Do you understand?

Defendant: Yes, your Honor.

Magistrate Judge: Are you suffering from any illnesses or any other problems that would prevent you from hearing well or fully participating today?

Defendant: No, your Honor.

Magistrate Judge: Is it all right with you if (Defense-1 & Defense-2 names) stand by you for this hearing?

Defendant: Yes.

Magistrate Judge: Has there been time to read the complaint or have it read to you?

Defendant: Yes, there has.

Magistrate Judge: Do you understand it?

Defendant: Yes.

Magistrate Judge: These charges, if they would go to a penalty phase, carry a term of imprisonment of not less than 1 year and not more than 40 years and up to a 2 million dollar fine. You have the right to be represented by an attorney. If you cannot afford the services of an attorney, I will appoint one for you without cost to you. You have the right to a probable cause hearing. You also have the right to have the grand jury determine whether there is probable cause to support the charges against you. If probable cause is found, you have the right to a jury trial before a United States District Judge. You can challenge the government's evidence and present your own. You have the right to cross examine every

government witness and the right to present your own witnesses. The Court would compel the attendance of your witnesses at your trial if you ask the Court to do so. Do you have any questions about what I have just said to you?

Defendant: No, your Honor.

Magistrate Judge: Based upon the representations in the financial declaration I find you qualify for appointment of counsel. I am appointing, (Defense-1 & Defense-2 names) to assist you. The government has filed a pretrial detention motion and that means you have the right to a detention hearing. I am setting this hearing for next Monday afternoon at 3:00pm in this courtroom. I am directing the United States Probation Office to prepare a pretrial services report. When you are contacted by Probation anything you say to them goes into that report. A pretrial service report addresses your risk of flight or danger to the community if you are released from detention pretrial. That report is available for you to review through your attorney. In the meantime, I am remanding you to custody of the United States Marshal until further order of the Court. You will be made available at all reasonable times to consult with your attorney. You will be housed separately from persons who have been convicted since you are presumed innocent. Is there anything else from counsel?

AUSA and Defense Counsel: No, your Honor.

Magistrate Judge: Very well, we are in recess.

Courtroom Deputy: (*Standing*) All rise.

****End Scene****

Narrator: Please be seated.

You heard the Magistrate Judge go over the rights of the accused. Those rights include the right to remain silent, appointment of an attorney, challenging the government's evidence and presenting their own, probable cause hearing, to have witnesses testify – the Court will compel witnesses to appear, and a jury trial.

Some individuals charged decide not to go to trial and enter a plea of guilty to the charge or a lesser charge. This results in a reduced sentence. About *90% of cases* in our Court end this way.

Key Players in the courtroom:

- Courtroom Deputy - takes notes of proceedings, swears in witnesses, handles exhibits (evidence)
- Court Reporter - records proceedings and prepares transcripts
- Jury Administrator - brings in randomly selected jurors

The trial begins with jury selection. The Court gets their jurors from voter registration and department of licensing lists.

For the process of Voir Dire (French for "Speak the Truth") (*Voir/True, Dire/Say*) the Court and Attorneys ask questions to see if potential jurors can be impartial. Both sides can challenge (strike) jurors. There are two types of Challenges - For Cause and Peremptory:

- For Cause = unlimited (Can the juror be fair?)
- Peremptory = # depends on type of case – can strike for any reason except race or gender, juror is unaware
 - Normally the Government gets 6 and Defense gets 10

A criminal trial requires 12 jurors for deliberation, but Judges usually choose 14 to allow for two alternates in case of emergency.

(For purposes of our simulation, you do not know the defendant or the attorneys).

Let's watch a jury selection.

Scene 2: Voir Dire & Jury Selection

Article III Judge: Good morning/afternoon ladies and gentlemen. We are here to select a jury for a criminal case which involves a charge of possession with intent to distribute ecstasy near the Eastern Washington University campus. Counsel for the government, would you introduce yourself and your co-counsel to the prospective jurors, please.

AUSA-1: Yes, your Honor. Good morning/afternoon, ladies and gentlemen. My name is *(state your name)* and I am an Assistant United States Attorney representing the government. My co-counsel is *(AUSA-2 name)*.

Article III Judge: Counsel for the defendant, would you introduce yourself, your co-counsel, and your client to the prospective jurors, please.

Defense-1: Yes, thank you, your Honor. Good morning/afternoon, ladies and gentlemen, I am *(state your name)*. My co-counsel is *(Defense-2 name)*. My client is Alex Hall of Cheney, Washington.

Article III Judge: Mr./Ms. Hall, would you please stand so the prospective jurors can see you? *(Defendant stands)* Thank you, you may sit down. Now I would ask that if any of the jurors know either of the Assistant United States Attorneys or counsel for the defendant, please indicate so by raising your hand. *(Short pause)* I see no hands. If any of you know the defendant, Mr./Ms. Hall, please indicate so by raising your hand. *(Short pause)* There are no hands raised.

AUSA-2: Juror number 11, on your questionnaire you stated you disagree with many drug laws. Could you please explain your comment?

Juror # 11: I think that whatever I do in my house is my business and not the government's.

AUSA-2: Your Honor, I ask that juror number 11 be excused for cause.

Article III Judge: *(To Juror #11)* If you are selected to sit on this case, will you be able to render a verdict solely on the evidence presented at the trial and in the context of the law as I will give it to you in my instructions, disregarding any other ideas, notions, or beliefs about the law?

Juror #11: Yeah, I think so.

Article III Judge: Counsel, there is no evidence suggesting this juror cannot set aside his/her opinion and act impartially. Considering the entire voir dire (*vo-ah deer*) of this juror, your motion to remove for cause is denied.

Defense-2: Juror number five, I noticed on your questionnaire that five years ago you had a friend who was assaulted and seriously injured by a drug dealer. Do you think this experience would affect your view of this case?

Juror # 5: I think drug dealers and users are the worst people ever. They have no credibility. This person must be guilty, or we wouldn't be here.

Defense-2: Thank you for your honesty. Your Honor, I move that juror number five be excused for cause.

Article III Judge: Motion granted. Juror number five you are excused. Please step down and thank you for being here today. Juror number 15 will you please take the seat that number five just left. Thank you.

Narrator: Peremptory challenges are actually done in secret. Attorneys do not have to state a reason for the challenges and jurors don't know they were challenged. But for this scenario we let you have a little fun with it.

Defense and Prosecution each pick one active sitting juror (except for Juror #1) and provide the name to the Courtroom Deputy, or to the Narrator, who hands it to the Judge.

Article III Judge: Will Mr./Ms. *(Juror name)* and Mr./Ms. *(Juror name)*, please stand. You are excused. Thank you for coming in today. Jurors number 16 and 19, please take their places in the jury box.

****End Scene****

Narrator: We have our jury and we are ready to go to trial. Opening Statements are done by each side and the Government goes first.

Time for opening statements.

Scene 3: Opening Statements

AUSA-1: May it please the Court and counsel, ladies and gentlemen of the jury. Once again, I'm (*State your name*), an Assistant United States' attorney. My co-counsel and I are going to present this case on behalf of the United States. I'd like to highlight for you what this case is about and what the evidence will show. This case is about the Defendant, Mr./Ms. Hall, possessing 2,040 pills of Ecstasy disguised in skittles packages near the Eastern Washington University campus. On February 2, 2018, while working at the U.S. Post Office in Cheney, Washington, a Postal Inspector noticed a strange looking package addressed to a "Melody Nelson" at the P.O. Box rented by the Defendant. A narcotics dog picked the package from a line up with other packages. Once the Inspector obtained a search warrant to seize and search the package, he discovered 12 skittles packages which appeared to be tampered with. Inside, were not our favorite candies, but 2,040 Ecstasy pills.

AUSA-2: Prior to resealing the package, the Inspector installed a court-ordered tracking device. Surveillance video captured the Defendant picking up the package from the United States Post Office. Undercover drug enforcement agents then followed the Defendant driving a Ford Mustang back to a duplex, which neighbors the EWU campus. Thirty minutes later, a man by the name of Tim Hansen arrived and parked in an alley behind the duplex. Minutes later agents witnessed the Defendant and Mr. Hansen exit the rear of the duplex. The Defendant was carrying the package and then placed it in the

trunk of Mr. Hansen's car. Fearing the two were going to leave, the agents got out of their van and shouted "Police" and directed the two to put their hands up. Both the Defendant and Mr. Hansen fled on foot toward a fence but were quickly caught. Immediately after the arrest the residence was searched.

There will be no question and there is no reason to doubt, that Mr./Ms. Hall is guilty of this crime. I thank you in advance for your attention.

Defense-1: Ladies and gentlemen of the jury, when my client walked into this courtroom, when she took her seat, when she placed her trust in you, I'm sure she did it with some of the same fear she felt when she was so suddenly confronted by the undercover agents on that day in February. It is a helpless feeling to have your fate placed in someone else's hands, but all she can do today is what she did on that day; tell the truth. And that is what she intends to do in this trial, to rely on the whole truth. I emphasize that because what you just heard from the prosecutor was anything but the whole truth. When you hear the whole story, you will learn there is no evidence that my client knew what was inside that package and is not guilty of this crime. Thank you.

****End Scene****

Narrator: The defendant is presumed innocent. The Government must prove the defendant is guilty beyond a reasonable doubt.

After opening statements, both sides can call witnesses. When you question your own witness it's called Direct Examination, when the other side questions your witness it's Cross Examination.

Scene 4: Examination of Witnesses

AUSA-1: Your Honor, the Government now calls the Postal Inspector, (*Postal Inspector name*), as a witness.

(The Courtroom Deputy raises their right hand)

Courtroom Deputy: Raise your right hand. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?

Inspector: I do.

Courtroom Deputy: Please state your full name for the Court and record.

Inspector: My name is (*State your name*).

AUSA-1: Inspector, you discovered a strange looking package while in the performance of your duties?

Inspector: Yes, I did.

AUSA-1: Please describe to the jury what you found.

Inspector: I noticed a strange looking package with excessive tape, excessive postage, and no return address. When I opened the package, I discovered it contained 12 Skittles brand candy packages. The packages appeared to have been tampered with. I opened the packages and each one contained numerous bluish-green pills instead of candy. I did a field narcotics test and verified the presence of Ecstasy. There was a total of 2,040 bluish-green pills, each bearing an imprint of a star.

AUSA-1: 2,040? That's a lot of pills for just one person, isn't it?

Defense-2: Objection, calls for a conclusion this witness is not qualified to make.

Article III Judge: Overruled. Go ahead and answer the question.

Inspector: Yes.

AUSA-1: Inspector, what did you do next?

Inspector: I arranged to have video surveillance taken of the lobby area so we could record the package being picked up. I put the pills back, placed a tracking device in the package, sealed the package back up, and then placed the package in the Post Office box it was addressed to. ****Narrator preps video****

AUSA-1: I'm going to play that recording now. Please describe what is happening to the jury.

(Video is played)

Inspector:

INSPECTOR – please note:

WAIT FOR VIDEO TO BEGIN & SPEAK LINES AS VIDEO IS DISPLAYED.

(If no video, then no need to wait before speaking)

It is about 3:00pm on the day in question and the defendant comes into the lobby, opens the Post Office box with her key, removes the package, closes the box, and leaves the Post Office.

(Video is turned off)

AUSA-1: What did you do after the defendant picked up the package?

Inspector: Using a receiver that receives signals from the tracking device, I followed the defendant's car from the Cheney Post Office to 1504 Elm Street right next to the Eastern Washington University campus.

AUSA-1: What did you observe?

Inspector: He/She parked at the duplex and entered Unit A. I monitored the front of the building. I had already notified the DEA and when they arrived, they monitored the back. The DEA agents made the arrest.

AUSA-1: Thank you, Inspector.

Defense-2: Inspector, we all know that Cheney is not a very large town. Tell me, on average, how many packages does the Cheney Post Office select for further inspection?

Inspector: Oh, I'd say one every couple of months or so. It just depends.

Defense-2: So, it's not that often you find suspicious packages in Cheney?

Inspector: I guess you could say that.

****Narrator displays photo of mailed package****

Defense-2: Inspector, is this the package you discovered on February 2, 2018?

Inspector: Yes.

Defense-2: At any time while you were examining this package did you notice to whom the package was addressed?

Inspector: Yes.

Defense-2: To whom was the package addressed?

Inspector: Melody Nelson

Defense-2: Was the name Alex Hall anywhere on this package?

Inspector: No, but it was sent to their Post Office box.

Defense-2: Inspector, please just answer my question. So, who is Melody Nelson?

Inspector: I don't know.

Defense-2: At any time in your investigation did you attempt to find out who Melody Nelson is?

Inspector: Well I consulted two different postal databases and there was no record of a Melody Nelson ever renting this Post Office box. We had to move quickly because the package was mailed using next-day air. We knew the recipient was likely expecting the package and would become suspicious if it were delayed. Besides, drug dealers use fake names on packages all the time.

Defense-2: But Inspector, the fact of the matter is that you cannot say and did not even investigate whether Melody Nelson was a fictitious name or not, right?

Inspector: Correct.

Defense-2: I have one more thing. When Mr./Ms. Hall was arrested, what was the condition of the package?

Inspector: It was unopened.

Defense-2: Thank you. No further questions. (*Picture of package removed*)

Article III Judge: (*To the Postal Inspector*) Thank you for testifying. You are excused.

AUSA-2: Your Honor, the government calls (*Student Witness name*) to the stand.

Article III Judge: Proceed.

(The Courtroom Deputy raises their right hand.)

Courtroom Deputy: Raise your right hand. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?

Student Witness: I do.

Courtroom Deputy: Please state your full name for the Court and record.

Student Witness: My name is (State your name).

AUSA-2: Mr./Ms. (Student Witness last name), on the day in question what were you doing at the Defendant's residence?

Student Witness: I was visiting my friend, their roommate.

AUSA-2: Did you see Mr./Ms. Hall enter the room that day?

Student Witness: Yes, I did.

AUSA-2: Please tell the Court and jury what you saw and heard.

Student Witness: He/She came inside and was carrying a small package. He/She walked into the kitchen and I thought I heard him/her say to my friend "hey, remember, don't tell anybody", or something like that. Apparently, they'd told my friend specific instructions on what to do whenever a package would come.

Defense-1: Objection, your Honor. Hearsay – and I ask the Court to immediately instruct the jury on this.

Article III Judge: Sustained. Members of the jury, you must disregard this witness's last remark regarding what Mr./Ms. Hall apparently told the roommate. That is what we refer to as hearsay and you may not consider it in any way whatsoever in rendering your decision in this case.

AUSA-2: After Mr./Ms. Hall walked into the kitchen, what did she do next?

Student Witness: He/She immediately made a phone call.

AUSA-2: Did you hear any of the conversation?

Student Witness: No, I really wasn't paying attention.

AUSA-2: No further questions, Your Honor.

Defense-1: Mr./Ms. (*Student Witness last name*) what were you doing when Mr./Ms. Hall walked in the duplex unit that day?"

Student Witness: Listening to music and playing video games.

Defense-1: So, you were listening to music and playing video games, and you also just testified that you weren't really paying any attention. Yet you said you

heard Mr./Ms. Hall say something like ‘don’t tell anybody.’ Is there any possibility that you might have misheard? Is it possible he/she said, ‘tell Melody’?

AUSA-2: Objection. Asked and answered.

Article III Judge: Counsel, this is cross-examination. I have wide discretion in deciding the proper scope. I’ll allow it. Go ahead and answer.

Student Witness: Well, I guess it is possible.

Defense-1: So, you were listening to music and playing video games, and you also just testified that you weren’t really paying any attention.

Student Witness: Right.

Defense-1: Was the package that you saw carried in ever opened?

Student Witness: No.

Defense-1: Thank you. No further questions, Your Honor.

Article III Judge: *(To Student Witness)* You may step down.

****End Scene****

Narrator: Both sides can give Closing Arguments - remind the jurors of the highlights of the evidence they presented. Government has the burden of proof.

Scene 5: Closing Arguments

AUSA-1: May it please the Court, counsel, ladies and gentlemen of the jury. On behalf of the Government I would like to thank you for the close attention you paid to the evidence presented in this case. The Judge has given you instructions that tell you what the law is related to the charges against Mr./Ms. Hall. As the Court has noted all of the instructions are equally important, but I would like to draw your attention to the instruction that sets out the elements that the Government must prove and look at the evidence the Government presented related to each element. ****Narrator displays Elements of Offense**** The first element is that the defendant did knowingly and intentionally possess, with intent to distribute, a measurable amount of Ecstasy; and secondly, at the time of such possession with intent to distribute, the defendant knew that the substance distributed was Ecstasy, a controlled substance. In addition, the possession of Ecstasy with intent to distribute occurred within 1,000 feet of a protected place – a school in this instance. The Defendant has stipulated that their residence was within 1,000 feet of a school. The pivotal issues here are whether the Defendant was the intended recipient of the package and whether he/she had knowledge of the contents of the package.

AUSA-2: Ladies and gentleman, I submit, that despite the self-serving story created by the defense, the Defendant's behavior with this package tells us what the true story is here. First, consider that this wasn't your ordinary package received in the mail. It was covered heavily in tape and had no return address. At the Post Office, if the Defendant was not anticipating receipt of a package, wouldn't it have been reasonable for her to turn around and return it to the postmaster? Instead, Mr./Ms. Hall went on home with it

and immediately made a phone call. But the final fact that removes any doubt, is the fact that he/she carried the package out of the residence and placed this small package *in the trunk* of Mr. Hansen's car, and then *fled* when the police appeared. You have also heard the expert testimony that drug dealers do not ordinarily entrust large quantities of drugs to couriers without alerting them to the contents of their packages. The evidence shows that the 2,040 tablets in concealed skittles packages were Ecstasy with an estimated street value of \$80,000. This alone is sufficient to prove the Defendant's intent to sell these tablets. Based on all the evidence presented, the Government asks you to return a verdict of guilty.

Defense-2: Ladies and gentlemen of the jury, my client and I are truly grateful for the time you have spent paying close attention to the evidence presented in this case. On February 2, 2018, my client innocently picked up their mail and had no idea that someone was taking advantage of them. That package was not addressed to Mr./Ms. Hall and he/she never opened that package. This is consistent with what my client told the arresting officer in the patrol car when he asked what was in the package, and he/she stated, "I don't know. It's not mine." Even the Government's agent admitted that drug dealers sometimes use unknowing couriers. The undercover agents in this case hastily made these arrests before they had any information on what was going to be done with that package.

Defense 1: Ladies and Gentleman, the Government has the highest burden that exists in the law. If you are not convinced the Government has proven every element of this case beyond a reasonable doubt, then you must return a verdict of not guilty. There is insufficient evidence that Mr./Ms. Hall either 1) knew what was inside that package or 2) intended on distributing its contents. I believe the facts lead you to only one conclusion. The conclusion which the law will require of you. And that conclusion will be that Mr./Ms. Hall is not guilty of this crime. Thank you.

End Scene

Narrator: After closing arguments, the Judge gives jurors their Jury Instructions which include what the law is and what is needed to return verdict of guilty per count. Alternate jurors are randomly selected and excused – if 14 jurors were selected, two would be alternates. They are subject to recall if a juror cannot continue. If called back to replace a juror, deliberations must go back to the beginning as the new juror has not been able to vote on anything decided and all verdicts must be unanimous. As the jury deliberates, they can only consider the testimony and exhibits presented during the trial. No outside information may be taken into account. In a criminal case the verdict must be unanimous, whether guilty or not guilty, on each individual count presented.

Scene 6: Jury's Verdict

Article III Judge: Juror Number One, I understand you are the presiding juror. Has the jury reached a verdict?

Juror #1: We have, Your Honor.

Courtroom Deputy retrieves the verdict from the Juror #1, takes it to the Judge who looks at it and hands it back.

The Defendant and Defense Counsel should stand at table.

Article III Judge: The Courtroom Deputy will read the verdict.

Courtroom Deputy: (*Stands*) In the matter of the United States vs Alex Hall, we the jury find the defendant guilty.

End Scene

Narrator: For the purposes of this simulation, the Defendant is found guilty. What would *your* verdict be if you had only the evidence presented in this simulation? The Judge sets a sentencing hearing for a future date. The U.S. Probation Office prepares a Presentence Investigation Report:

- They interview defendant, their family, the victims, previous employers, friends
- They calculate the criminal history
 - Paperwork on all previous transgressions are included, even as far back as truancy records
- It includes medical reports

The report calculates a proposed sentence from the U.S. Sentencing Guideline Manual. The Court allows both sides to comment on what they believe the sentence should be and the defendant can speak on their own behalf at sentencing. Let's watch the sentencing.

Scene 7: Sentencing (Post-Trial)

Probation Officer: ****Narrator displays Sentencing Table**** Your honor, during the presentence investigation, it was determined that the 2,040 pills of Ecstasy weighed 89.68 net grams. Therefore, in accordance with **section 2D1.1** of the sentencing guidelines, the Base Offense Level is 20. Since the offense of conviction involved a protected location, a school, the Base Offense Level is increased by 2 levels. The defendant went to trial and put the government to the burden of proving their guilt, so they are not entitled to any reduction for acceptance of responsibility. The Total Offense Level is calculated at 22. The defendant has no prior criminal history resulting in a Criminal History Category of I.

Article III Judge: The Court adopts the sentencing guidelines as outlined in the presentence investigation prepared by United States Probation Officer, (*Probation Officer name*). With a Total Offense Level 22 and a Criminal History Category of I, the advisory sentencing range is 41-51 months in prison. Considering the sentencing guidelines and the factors set forth at **18 USC 3553(a)**, the sentence is 41 months incarceration. Mr./Ms. Hall, your sentence will also include a 72 month term of

supervised release. Your supervised release is double the length ordinarily imposed because the crime you committed is near a school, and will include standard conditions of supervision, and the special conditions of participation in a substance abuse evaluation and treatment, and random urinalysis testing. If you violate the terms of your supervised release you could potentially face further incarceration. I will waive the fine as you do not have the ability to pay a fine. There is a \$100 special penalty assessment which is mandatory. Mr./Ms. Hall, you have the right to appeal your conviction and sentence. The appeal time starts from the date the Judgment is filed and runs for 14 days. You should discuss that with your attorney.

End Scene

Narrator:

The defendant will serve 41 months imprisonment (3 years and 5 months) followed by 72 months supervised release (6 years).

A U.S. Probation Officer monitors their progress and assists with finding employment, housing, and addressing substance abuse issues.

What questions do you have?