

Cultivating cannabis

[N.B. the treatment of the s28 reverse burden in this direction may be generous to the defendant, but it greatly simplifies the jury's task.]

The defendant is charged with cultivating plants of the genus cannabis.

Genus – simply means the group or family of plants which include cannabis.

There is no dispute that the *** plants found by the police were of the genus cannabis.

There are two issues for you to decide – firstly whether the defendant was cultivating the plants.

Cultivate is an ordinary English word.

It includes planting, feeding, fertilising, watering, looking after plants – anything which helps them to grow.

You have to decide whether the defendant did anything to help the cannabis plants to grow.

The prosecution case is that **. He says that **.

The second issue is whether the defendant knew or suspected that the plants were cannabis plants. He says that he did not know that they were cannabis.

It is a defence for a defendant to prove that he neither knew nor suspected nor had reason to suspect that the plants were cannabis plants. The law is that that is a matter for him to prove on all the evidence. However, whenever the law requires a defendant to prove something, he does not have to make you sure of it. He only has to show that it is probable, which means it is more likely than not, that he did not know, suspect or have reason to suspect that the plants were cannabis plants. Or, to put it another way, the prosecution must make you sure that he knew or suspected that the plants were cannabis plants.

The prosecution rely upon the smell and appearance of the plants. They point to the special measures taken – the blacking out of the windows, the ventilation systems, the heating and the lighting.

So, the key questions in relation to Count *, having regard to all the evidence and the directions which I give you, are

Did the defendant do something to help the plants grow?

Did he know or suspect that they were cannabis plants?

If you are sure that the answer to both questions is “yes”, he is guilty. If the answer to either question may be “no” he is not guilty.