

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

United States of America,

Plaintiff(s),

vs.

Case No. 09-00296-04/05-CR-W-FJG

James M. Cox (04),
Steve W. Larson (05),

Defendant(s).

INSTRUCTIONS USED BY JURORS

INSTRUCTION NO. 9

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 10

The government and the defendants have stipulated – that is, they have agreed – that certain facts are as counsel have just stated. You should therefore treat those facts as having been proved.

INSTRUCTION NO. 11

You have heard evidence that witnesses Dennis Anthony, Michael Clary, Michael Hensley, Donald Street, Steven Street, John Angell, and Nicholas Donkersloot have pleaded guilty to a crime which arose out of the same events for which the defendants are on trial here. You must not consider those guilty pleas as any evidence of these defendants' guilt. You may consider that witness's guilty plea only for the purpose of determining how much, if at all, to rely upon the witness's testimony.

INSTRUCTION NO. 12

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 13

I have mentioned the word “evidence.” The “evidence” in this case consists of the testimony of witnesses, the documents and other things received as exhibits, and the facts that have been stipulated – this is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 14

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of defendant Cox in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 15

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NO. 16

You have heard evidence that several witnesses have previously been convicted of crimes. You may use that evidence only to help you decide whether to believe each witness and how much weight to give his testimony.

INSTRUCTION NO. 17

You have heard evidence that some witnesses have received promises from the Government that their testimony will not be used against them in a criminal case. You have also heard evidence that other witnesses have made plea agreements with the Government. The testimony was received in evidence and may be considered by you. You may give this testimony such weight as you think it deserves. Whether or not this testimony may have been influenced by the Government's promises is for you to determine.

INSTRUCTION NO. 18

You have heard evidence that some witnesses for the Government hope to receive a reduced sentence on criminal charges in return for their cooperation with the Government in this case. These witnesses entered into agreements with the Government which provide that in return for their assistance, the Government may recommend a less severe sentence for the crimes with which they are charged. If the prosecutor handling a witness's case believes that the witness provided substantial assistance, that prosecutor can file in the court in which the charges are pending against this witness a motion to reduce his sentence below any applicable statutory minimum. The judge has no power to reduce a sentence for substantial assistance unless the Government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the Government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

You may give the testimony of these witnesses such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by his hope of receiving a reduced sentence is for you to decide.

INSTRUCTION NO. 19

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 20

You will remember that certain summaries and charts were admitted in evidence. You may use those summaries and charts as evidence, even though the underlying documents and records are not here.

INSTRUCTION NO. 21

The indictment in this case charges that each of the defendants committed the crime of conspiring with each other and others, both known and unknown, to distribute:

(1) a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, in an amount of five hundred (500) grams or more; (2) cocaine, a Schedule II controlled substance; and (3) marijuana, a Schedule I controlled substance. Each defendant has pleaded not guilty.

As I told you at the beginning of the trial, 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 or her. So the presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

Keep in mind that you must give separate consideration to the evidence about each individual defendant. Each defendant is entitled to be treated separately, and you must return a separate verdict for each defendant.

There is no burden upon a defendant to prove that he or she is innocent. Accordingly, the fact that defendant Larson did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 22

The crime of Conspiracy to Distribute Five Hundred (500) Grams or More of Methamphetamine as charged in the indictment, has four essential elements, which are:

One, between on or about January 1, 2002, and on or about July 31, 2007, two or more persons reached an agreement or came to an understanding to distribute methamphetamine;

Two, a particular defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

Three, at the time the particular defendant joined in the agreement or understanding he knew the purpose of the agreement or understanding; and

Four, the agreement or understanding involved in excess of five hundred (500) grams of a mixture or substance containing a detectable amount of methamphetamine.

If all of these elements have been proved beyond a reasonable doubt as to a particular defendant, then you must find that defendant guilty of the crime of Conspiracy to Distribute Five Hundred (500) Grams or More of Methamphetamine; otherwise you must find that defendant not guilty of this crime.

The quantity of controlled substances involved in the agreement or understanding includes the controlled substances the defendant distributed or agreed to distribute. The quantity also includes the controlled substances fellow conspirators distributed or agreed

to distribute, if you find that those distributions or agreements to distribute were a necessary or natural consequence of the agreement or understanding and were reasonably foreseeable by a defendant.

INSTRUCTION NO. 23

The government must prove that a defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is a defendant or named in the indictment. You do not have to find that all of the persons charged were members of the conspiracy in order to find a particular defendant guilty of the conspiracy charge.

The “agreement or understanding” need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not, standing alone, prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

You must decide, after considering all of the evidence, whether the conspiracy alleged in the indictment existed. If you find that the conspiracy did exist, you must also decide whether each particular defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed, or at some later time while it was still in effect. In making that decision, you must consider only the evidence of each defendant's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the particular defendant.

INSTRUCTION NO. 24

To assist you in determining whether there was an agreement or understanding to distribute methamphetamine, cocaine, and/or marijuana you are advised that the elements of distribution of a controlled substance are:

One, that a person intentionally transferred methamphetamine, cocaine, or marijuana to another person; and

Two, that at the time of transfer, the person knew that it was methamphetamine, cocaine, or marijuana.

Keep in mind that the indictment charges a conspiracy to distribute methamphetamine, cocaine, and/or marijuana and not that the crime of distributing methamphetamine, cocaine, and/or marijuana was committed.

INSTRUCTION NO. 25

You may consider acts knowingly done and statements knowingly made by a defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, for a person who knowingly, voluntarily, and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

INSTRUCTION NO. 26

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

INSTRUCTION NO. 27

You will note that the indictment charges that the offenses were committed on or about a specified date or between specified dates. The government does not have to prove that the crimes were committed on that exact date or between those exact dates so long as the government proves it occurred reasonably near the dates stated in the indictment.

INSTRUCTION NO. 28

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict – whether guilty or not guilty – must be unanimous.

Each of you must make your own conscientious decision, 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.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through my clerk, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone – including me – how your votes stand numerically.

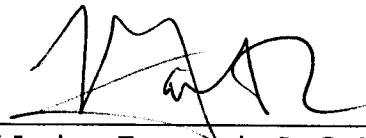
Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not guilty must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. [The form reads: (read form)]. You will take this form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise Ms. Enss that you are ready to return to the courtroom.

INSTRUCTION NO. 29

Members of the Jury:

I have reviewed your request. You must rely upon the evidence and your collective memory and knowledge of the evidence presented during your deliberations of this case.



Chief Judge Fernando J. Gaitan, Jr.

Dated: 12/17/09

Time: 4:35 pm

INSTRUCTION NO. 30

MEMBERS OF THE JURY:

This case was submitted to you at approximately 3:00pm , and it is now nearly 4:30 p.m. The end of the business day is drawing near. I do not want you to feel pressured to make a decision today, if you believe you need more time. Therefore, please advise:

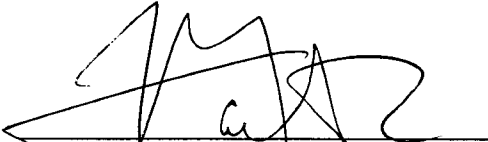
1. Would you like to recess for the evening and resume deliberations in the morning?

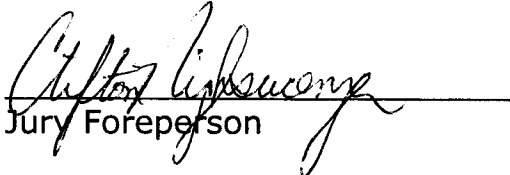
Yes ✓ No _____

2. Would you prefer to continue deliberations today?

Yes _____ No ✓

You should know that, in any event, I will probably conclude the deliberations for the day at 5:30 p.m.


Fernando J. Gaitan, Jr.
Chief U.S. District Judge


Clifton Lipscomb
Jury Foreperson

Date: 12/17/09

Time: 4:35 p.m.

INSTRUCTION NO. 31

As stated in my instructions, it is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to a unanimous result you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if in your individual judgment the evidence fails to establish guilt beyond a reasonable doubt, then the defendant should have your vote for a not guilty verdict. If all of you reach the same conclusion, then the verdict of the jury must be not guilty. Of course the opposite also applies. If in your individual judgment the evidence establishes guilt beyond a reasonable doubt, then your vote should be for a verdict of guilty and if all of you reach that conclusion then the verdict of the jury must be guilty. As I instructed you earlier, the burden is upon the Government to prove beyond a reasonable doubt every element of the crime charged.

Finally, remember that you are not partisans; you are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. But I suggest that you carefully reconsider all the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

Please go back now to finish your deliberations in a manner consistent with your good judgment as reasonable persons.