

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Criminal Action No.
v.)	10-00320-14-CR-W-DGK
)	
RAFAEL ZAMORA,)	
)	
Defendant.)	

RAFAEL ZAMORA’S PROPOSED JURY INSTRUCTIONS

The defendant, Rafael Zamora, by counsel, hereby respectfully submits his proposed jury instructions.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which electronically served all parties.

/s/

E. Eugene Harrison

CONSPIRACY: "AGREEMENT" EXPLAINED

The government must prove that the defendant reached an agreement or understanding with at least one other person.

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 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 Count One of the Indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the Rafael Zamora 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 evidence of Rafael Zamora'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 Rafael Zamora.

8TH CIRCUIT MODEL JURY INSTRUCTION 5.06B (modified)

JOINING THE CONSPIRACY

To prove an individual has joined a conspiracy, the government is required to present evidence establishing some degree of knowing involvement and cooperation beyond a mere purchase of marijuana from the conspiracy.

United States v. Slagg, 651 F.3d 832, 846 (8th Cir. 2011)

PROVING INTENT TO DISTRIBUTE

Possessors of a controlled substance, who intend to share it between themselves as users, may not be found guilty of possession with intent to distribute.

United States v. Swiderski, 548 F.2d 445, 447 (2nd Cir. 1977)(cited with approval in 8th Circuit Model Jury Instruction 6.21.841A)

LESSER-INCLUDED OFFENSE

If your verdict under Instruction No. ____ as to Rafael Zamora is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict as to Rafael Zamora on Instruction No. ____, you should record that decision on the verdict form[s] and go on to consider whether Rafael Zamora is guilty of the crime of simple possession of marijuana under this instruction. The crime of simple possession of marijuana, has two elements, which are:

One, the defendant was in possession of marijuana; and

Two, the defendant knew he was in possession of marijuana.

For you to find Rafael Zamora guilty of this crime, the government must prove all of these elements beyond a reasonable doubt as to Rafael Zamora; otherwise you must find Rafael Zamora not guilty of this crime.

8TH CIRCUIT MODEL JURY INSTRUCTION 3.10 (modified)