

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

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
V.)	CASE NO. 10-00320-12-CR-W-DGK
)	
DESHAUN L. CERUTI,)	
)	
DEFENDANT.)	

DEFENDANT CERUTI'S PROPOSED JURY INSTRUCTIONS

COMES NOW DeShaun Ceruti, by and through counsel, and hereby respectfully submits his proposed jury instructions.

Respectfully submitted,

s/Kelly M. Connor-Wilson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record by CM/ECF this 17th day of October, 2012.

s/Kelly M. Connor-Wilson
Kelly M. Connor-Wilson

INSTRUCTION NO. ____

You have heard evidence that the witness, Muhammed Rollie, has pled guilty to a crime which arose out of the same events for which the defendant is on trial here. You must not consider that guilty plea as any evidence of this defendant's guilt. You may consider that witness's guilty plea only for the purpose of determining how much, if at all, to rely upon that witness's testimony.

8TH CIRCUIT MODEL JURY INSTRUCTION 2.18 (modified)

INSTRUCTION NO. ____

You have heard evidence that the witness, Muhammed Rollie, has pled guilty to a crime which arose out of the same events for which the defendant is on trial here. You must not consider that guilty plea as any evidence of this defendant's guilt. You may consider that witness's guilty plea only for the purpose of determining how much, if at all, to rely upon that witness's testimony.

INSTRUCTION NO. ____

If your verdict under Instruction No. ____ as to DeShaun Ceruti is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict as to DeShaun Ceruti on Instruction No. ____, you should record that decision on the verdict form[s] and go on to consider whether DeShaun Ceruti 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 DeShaun Ceruti guilty of this crime, the government must prove all of these elements beyond a reasonable doubt as to DeShaun Ceruti; otherwise you must find DeShaun Ceruti not guilty of this crime.

8TH CIRCUIT MODEL JURY INSTRUCTION 3.10 (modified)

INSTRUCTION NO. ____

If your verdict under Instruction No. ____ as to DeShaun Ceruti is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict as to DeShaun Ceruti on Instruction No. ____, you should record that decision on the verdict form[s] and go on to consider whether DeShaun Ceruti 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 DeShaun Ceruti guilty of this crime, the government must prove all of these elements beyond a reasonable doubt as to DeShaun Ceruti; otherwise you must find DeShaun Ceruti not guilty of this crime.

INSTRUCTION NO. ____

If your verdict under Instruction No. ____ as to DeShaun Ceruti is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict as to DeShaun Ceruti on Instruction No. ____, you should record that decision on the verdict form[s] and go on to consider whether DeShaun Ceruti is guilty of the crime of simple possession of crack cocaine under this instruction. The crime of simple possession of crack cocaine, has two elements, which are: *One*, the defendant was in possession of crack cocaine; and *Two*, the defendant knew he was in possession of crack cocaine.

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

8TH CIRCUIT MODEL JURY INSTRUCTION 3.10 (modified)

INSTRUCTION NO. ____

If your verdict under Instruction No. ____ as to DeShaun Ceruti is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict as to DeShaun Ceruti on Instruction No. ____, you should record that decision on the verdict form[s] and go on to consider whether DeShaun Ceruti is guilty of the crime of simple possession of crack cocaine under this instruction. The crime of simple possession of crack cocaine, has two elements, which are: *One*, the defendant was in possession of crack cocaine; and *Two*, the defendant knew he was in possession of crack cocaine.

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

INSTRUCTION NO. ____

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

8TH CIRCUIT MODEL JURY INSTRUCTION 4.01 (modified)

INSTRUCTION NO. ____

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

INSTRUCTION NO. _____

You have heard evidence that Muhammed Rollie has made a plea agreement with the Government. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by the plea agreement is for you to determine.

The witness's guilty plea cannot be considered by you as any evidence of this defendant's guilt. The witness's guilty plea can be considered by you only for the purpose of determining how much, if at all, to rely upon the witness's testimony.

8TH CIRCUIT MODEL JURY INSTRUCTION 4.04 (modified)

INSTRUCTION NO. ____

You have heard evidence that Muhammed Rollie has made a plea agreement with the Government. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by the plea agreement is for you to determine.

The witness's guilty plea cannot be considered by you as any evidence of this defendant's guilt. The witness's guilty plea can be considered by you only for the purpose of determining how much, if at all, to rely upon the witness's testimony.

INSTRUCTION NO. ____

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.

8TH CIRCUIT MODEL JURY INSTRUCTION 4.10 (modified)

INSTRUCTION NO. ____

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. ____

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 the indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether DeShaun Ceruti, the defendant whose case you are considering, 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 DeShaun Ceruti'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 defendant.

8TH CIRCUIT MODEL JURY INSTRUCTION 5.06B (modified)

INSTRUCTION NO. ____

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 the indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether DeShaun Ceruti, the defendant whose case you are considering, 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 DeShaun Ceruti'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 defendant.

INSTRUCTION NO. ____

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 (or other controlled substance) from the conspiracy.

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

INSTRUCTION NO. ____

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 (or other controlled substance) from the conspiracy.

INSTRUCTION NO. ____

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)

INSTRUCTION NO. ____

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.