

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 09-00121-01-CR-SJ-DGK
)	
GILBERTO LARA-RUIZ,)	
a/k/a "HILL")	
)	
Defendant.)	

GOVERNMENT’S PROPOSED JURY INSTRUCTIONS

Comes now the United States of America, by and through its undersigned attorneys, and respectfully submits the proposed jury instructions listed below and attached hereto, for use by the court during the trial of this matter. The United States reserves the right to supplement these proposed instructions as required to meet additional issues which may arise at trial.

Respectfully submitted,

Beth Phillips
United States Attorney

By */s/ Bruce Rhoades*

Bruce Rhoades, #88156 (AR)
Assistant United States Attorney

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Telephone: (816) 426-3122

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on May 19, 2011, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to counsel of record.

/s/ Bruce Rhoades _____

Bruce Rhoades

Assistant United States Attorney

INSTRUCTION NO. _____

Ladies and gentlemen: I shall take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I shall give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions – both those I give you now and those I give you later – are equally binding on you and must be followed.

This is a criminal case, brought against the defendant by the United States Government. The charges are set forth in what is called an indictment, which is summarized as follows:

COUNT ONE (14)

On or between January 1, 2006 and December 30, 2006, in the Western District of Missouri, GILBERTO LARA-RUIZ, a/k/a “Hill”, defendant herein, in furtherance of a drug trafficking crime for which he may be prosecuted in a court of the United States, distribution of methamphetamine, possessed at least one firearm, to wit: an AR-15 style rifle shown at his house in mid-2006, a black 9 mm semi-auto pistol traded for drug debt reduction and methamphetamine in mid-2006, and a black .32 caliber semi-auto pistol and a .22 caliber revolver traded for methamphetamine to a co-conspirator in 2006, all contrary to the provisions of Title 18, United States Code, Section 924(c)(1)(A)(i).

COUNT TWO (15)

On or about November 18, 2006, in the Western District of Missouri, GILBERTO LARA-RUIZ, a/k/a “Hill”, defendant herein, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, distribution of methamphetamine, used and discharged a firearm, to wit: a loaded handgun, all contrary to the provisions of Title 18, United States Code, Section 924(c)(1)(A)(iii).

You should understand that an indictment is simply an accusation. It is not evidence of anything. The defendant has pleaded not guilty, and is presumed to be innocent unless and until proven guilty beyond a reasonable doubt.

It will be your duty to decide from the evidence whether the defendant is guilty or not

guilty of the crimes charged. From the evidence, you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from the facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

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.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

Finally, please remember that only this defendant, not anyone else, is on trial here, and that this defendant is on trial only for the crimes charged, not for anything else.

Plaintiff's Instruction No. 1

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 1.01

INSTRUCTION NO. _____

I have mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits, any facts that have been stipulated – that is, formally agreed to by the parties, and any facts that have been judicially noticed – that is, facts which I say you may, but are not required to, accept as true, even without evidence.

Certain things are not evidence. I shall list those things 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 sustain 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 strike from the record, or tell you to disregard, is not evidence and must not be considered.

4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

Plaintiff’s Instruction No. 2

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 1.03

INSTRUCTION NO. _____

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 of any witness 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 the witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with other evidence that you believe.

Plaintiff's Instruction No. 3

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 1.05

INSTRUCTION NO. _____

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it may not be practical for the court reporter to read back lengthy testimony. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. Do not let note-taking distract you so that you do not hear other answers by the witness.

When you leave at night, your notes will be secured and not read by anyone.

Plaintiff's Instruction No. 4

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 1.06

INSTRUCTION NO. _____

During the trial, it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference here while the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

Plaintiff's Instruction No. 5

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 1.07

INSTRUCTION NO. _____

Finally, to insure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until after a verdict has been delivered to the Court and the trial has ended and you have been discharged as jurors. This includes “posting” information on any type of social media (Twitter, Facebook, etc) or having discussions with anyone through email, the internet or otherwise.

Third, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it, until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case – you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side – even if it is simply to pass the time of day – an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they also are not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio, television, internet or other source reports about the case or about anyone involved with it. In fact, until the trial is over, I suggest that you avoid reading any

newspapers or news journals at all, avoid listening to any TV or radio newscasts at all, or reviewing news sites or court or legal sites on the internet. I do not know whether there might be any news reports of this case, but if there are, you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend save any stories and set them aside to give you after the trial is over. It is important for you to understand that this case must be decided by the evidence presented in the case and the instructions I give you.

Sixth, do not do any research or make any investigation on your own about any matter involved in this case. By way of examples, that means you must not read from a dictionary or a text book or an encyclopedia or talk with a person you consider knowledgeable or go to the Internet for information about some issue in this case. In fairness, learn about the case from the evidence you receive here at the trial and apply it to the law as I give it to you.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Plaintiff's Instruction No. 6

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 1.08 (modified)

INSTRUCTION NO. _____

The trial will proceed in the following manner:

First, the Government attorney will make an opening statement. Next the defendants' attorneys may, but do not have to, make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The Government will then present its evidence and counsel for the defendants may cross-examine. Following the Government's case, the defendant may, but does not have to, present evidence, testify or call other witnesses. If the defendant calls witnesses, the Government counsel may cross-examine them.

After presentation of the evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. The court will instruct you further on the law. After that you will retire to deliberate on your verdict.

Plaintiff's Instruction No. 7

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 1.09

INSTRUCTION NO. _____

We are about to take a recess and I remind you of the instruction I gave you earlier. During this recess or any other recess, you must not discuss this case with anyone, including the other jurors, members of your family, people involved in the trial, or anyone else. If anyone tries to talk to you about the case, please let me know about it immediately. Do not read, watch or listen to any news reports of the trial. Finally, keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

I may not repeat these things to you before every recess, but keep them in mind throughout the trial.

Plaintiff's Instruction No. 8

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 2.01

INSTRUCTION NO. _____

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 and during the 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.

Plaintiff's Instruction No. 9

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 3.01

INSTRUCTION NO. _____

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.

Plaintiff's Instruction No. 10

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 3.02

INSTRUCTION NO. _____

The charges in this case are as follows:

Count I (14) of the indictment charges that GILBERTO LARA-RUIZ, a/k/a “Hill”, committed the crime of possession of firearms in furtherance of a drug trafficking crime.

Count II (15) of the indictment charges that GILBERTO LARA-RUIZ, a/k/a “Hill”, committed the crime of use of a firearm during and in relation to a drug trafficking crime.

The defendant has pleaded not guilty to each crime with which he has been charged.

As I told you at the beginning of trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, The defendant is presumed to be innocent. The defendant, even though charged, begins the trial with no evidence against him. 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 element of the crime charged.

Keep in mind that you must give separate consideration to the evidence about each individual crime charged against the defendant, and must return a separate verdict for each of those crimes charged.

Plaintiff’s Instruction No. 11

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 3.08

INSTRUCTION NO. _____

You will note that the indictment charges that the offenses were committed “on or between” and “on or about” certain dates. Although it is necessary for the Government to prove beyond a reasonable doubt that the offenses were committed on dates reasonably near the dates alleged in the indictment, it is not necessary for the Government to prove that the offenses were committed precisely on the dates charged.

Plaintiff's Instruction No. 12

SOURCE: Kevin F. O'Malley et al., 1A Federal Jury Practice and Instructions
§ 13:05 (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 are not bound by the opinion of any expert and 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.

Plaintiff's Instruction No. 13

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 4.10

INSTRUCTION NO. _____

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.

Plaintiff's Instruction No. 14

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 3.11

INSTRUCTION NO. _____

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

Plaintiff's Instruction No. 15

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 4.01

INSTRUCTION NO. _____

The crime of possessing a firearm in furtherance of a drug trafficking crime as charged against GILBERTO LARA-RUIZ in Count I (14) of the indictment has two elements, which are:

- One*, the defendant committed the crime of distribution of methamphetamine; and
- Two*, that on or between January 1, 2006 and December 30, 2006, the defendant knowingly possessed firearms, to wit: an AR-15 style rifle shown at his house in mid-2006, a black 9 mm semi-auto pistol traded for drug debt reduction and methamphetamine in mid-2006, and a black .32 caliber semi-auto pistol and a .22 caliber revolver traded for methamphetamine to a co-conspirator in 2006, in furtherance of the distribution of methamphetamine.

You must unanimously agree that the firearms were possessed in furtherance of the drug trafficking crime in order to find the defendant guilty.

The phrase “in furtherance of” should be given its plain meaning, that is, the act of furthering, advancing, or helping forward. The phrase “in furtherance of” is a requirement that the defendant possess the firearm with the intent that it advance, assist or help commit the crime, not that it actually did so.

If all of these elements have been proved beyond a reasonable doubt, then you must find defendant guilty of the crime charged in Count I (14); otherwise, you must find him not guilty of this crime.

Plaintiff's Instruction No. 16

SOURCE: Eighth Circuit Manual of Model Jury Instructions (Criminal), (2009), No. 6.18.924(modified)

INSTRUCTION NO. _____

The crime of possessing a firearm in furtherance of a drug trafficking crime as charged against GILBERTO LARA-RUIZ in Count I (14) of the indictment has two elements, which are:

- One*, the defendant committed the crime of distribution of methamphetamine; and
- Two*, That on or about November 18, 2006, the defendant knowingly used a firearm, to wit: an unknown make and model handgun, during and in relation to the distribution of methamphetamine.

You must unanimously agree that the firearm was used during and in relation to the drug trafficking crime in order to find the defendant guilty.

The phrase “used a firearm” means that the firearm was actively employed in the course of the commission of the distribution of methamphetamine. You may find that a firearm was used during the course of commission of the distribution of methamphetamine if you find that it was brandished, displayed, used to strike someone or fired.

In determining whether the defendant used the firearm you may consider all the factors received in evidence in the case including the nature of the underlying drug trafficking crime alleged, the proximity of the defendant to the firearm, the usefulness of the firearm to the crime alleged, and the circumstances surrounding the presence of the firearm.

If all of the above elements have been proved beyond a reasonable doubt, then you must find defendant guilty of the crime charged in Count II (15); otherwise, you must find him not guilty of this crime.

Plaintiff's Instruction No. 17

SOURCE: Eighth Circuit Manual of Model Jury Instructions (Criminal),(2009), No. 6.18.924(modified)

INSTRUCTION NO. _____

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 the 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.

Plaintiff's Instruction No. 18

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 7.05

INSTRUCTION NO. _____

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 the marshal or bailiff, 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 you reach in this case. 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 the marshal or bailiff that you are ready to return to the courtroom.

Plaintiff's Instruction No. 19

SOURCE: Eighth Circuit Model Criminal Jury Instructions
No. 8.02

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 09-00121-01-CR-SJ-DGK
)	
GILBERTO LARA-RUIZ,)	
a/k/a "HILL")	
)	
Defendant.)	

VERDICT FORM

We, the jury, find the defendant, GILBERTO LARA-RUIZ, _____ of
(guilty/not guilty)

possession of a firearm (an AR-15 style rifle) in furtherance of a drug trafficking crime, as
charged in Count I (14) of the Indictment.

FOREPERSON OF THE JURY

DATE: _____ 2011
Kansas City, Missouri

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 09-00121-01-CR-SJ-DGK
)	
GILBERTO LARA-RUIZ,)	
a/k/a "HILL")	
)	
Defendant.)	

VERDICT FORM

We, the jury, find the defendant, GILBERTO LARA-RUIZ, _____ of
(guilty/not guilty)

possession of a firearm (a black 9 mm semi-auto pistol) in furtherance of a drug trafficking
crime, as charged in Count I (14) of the Indictment.

FOREPERSON OF THE JURY

DATE: _____ 2011
Kansas City, Missouri

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 09-00121-01-CR-SJ-DGK
)	
GILBERTO LARA-RUIZ,)	
a/k/a "HILL")	
)	
Defendant.)	

VERDICT FORM

We, the jury, find the defendant, GILBERTO LARA-RUIZ, _____ of
(guilty/not guilty)

possession of a firearm (a black .32 caliber semi-auto pistol and a .22 caliber revolver) in
furtherance of a drug trafficking crime, as charged in Count I (14) of the Indictment.

FOREPERSON OF THE JURY

DATE: _____ 2011
Kansas City, Missouri

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 09-00121-01-CR-SJ-DGK
)	
GILBERTO LARA-RUIZ,)	
a/k/a "HILL")	
)	
Defendant.)	

VERDICT FORM

We, the jury, find the defendant, GILBERTO LARA-RUIZ, _____ of
(guilty/not guilty)
use of a firearm during and in relation to a drug trafficking crime, as charged in Count II (15) of
the Indictment.

FOREPERSON OF THE JURY

DATE: _____ 2011
Kansas City, Missouri