

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 10-00162-16-CR-W-FJG
	)	
THEODORE S. WIGGINS,	)	
	)	
Defendant.	)	

**GOVERNMENT'S PROPOSED JURY INSTRUCTIONS**

Comes now the United States of America, by and through its undersigned attorneys, and respectfully submits the following proposed jury instructions to be given during and at the conclusion of the jury trial in this matter. The United States reserves the right to request and submit additional instructions upon issues which may arise during trial.

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Respectfully submitted,

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By: */s/ Brent B. Venneman*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on February 17, 2012, to the Electronic Filing System (CM/ECF) of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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*/s/ Brent B. Venneman*

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Brent B. Venneman  
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 defendants by the United States Government. The defendants are charged in what is called an indictment, which I will summarize as follows:

In Count One, defendant Theodore S. Wiggins is charged with conspiring with others to distribute more than five (5) kilograms of a mixture or substance containing cocaine, and more than two hundred, eighty (280) grams of a mixture or substance containing cocaine base (or “crack” cocaine) between the dates of on or about July 1, 2009, and on or about June 09, 2010.

In Count Eight, defendant Theodore S. Wiggins is charged with distributing some amount of a mixture or substance containing cocaine base (“crack” cocaine), on or about April 15, 2010.

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 proved 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 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 these defendants, and not anyone else, are on trial here, and that this defendant are on trial only for the crimes charged, not for anything else.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 1.01

**INSTRUCTION NO. \_\_\_\_\_**

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crimes charged, which the Government must prove beyond a reasonable doubt to make its case:

The crime of conspiracy to distribute controlled substances as charged in Count One of the Indictment, has four essential elements, which are:

- One*, between on or about July 1, 2009, and June 9, 2010, two or more persons reached an agreement or came to an understanding to distribute controlled substances, that is, cocaine and cocaine base (“crack” cocaine);
- Two*, the 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 defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding; and
- Four*, the agreement or understanding involved a mixture or substance containing five kilograms or more of cocaine, and a mixture or substance containing fifty grams or more of cocaine base (“crack cocaine”).

The crime of distributing cocaine base, as charged in Count Eight of the Indictment, has two essential elements, which are:

- One*, the defendant intentionally transferred cocaine base to another person; and
- Two*, at the time of the transfer, the defendant knew that it was cocaine base.

You should understand, however, that what I have just given you is only a preliminary outline. At the end of the trial I shall give you a final instruction on these matters. If there is any difference between what I just told you, and what I tell you in the instructions I give you at the end of the trial, the instructions given at the end of the trial must govern you.

**INSTRUCTION NO. \_\_\_\_\_**

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses, documents and other things received as exhibits, 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.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
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 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 other evidence that you believe.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
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. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. And 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.

**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.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
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 the trial has ended and you have been discharged as jurors.

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 lawsuit 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 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 or television 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, and avoid listening to any TV or radio newscasts at all. 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 clip out 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 this 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.

SOURCE: [Eighth Circuit Model Criminal Jury Instructions \(2009\)](#)  
No. 1.08

**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 each defendant may cross-examine. Following the Government's case, the defendants may, but do not have to, present evidence, testify or call other witnesses. If a defendant calls witnesses, the Government counsel may cross-examine them.

After presentation of 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.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
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 your fellow 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.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 2.01

**INSTRUCTION NO. \_\_\_\_\_**

***Proposed by Government***

The Government and the defendants have stipulated - that is, they have agreed - that if certain persons were called as witnesses, they would testify in the way counsel have stated. You should accept that as being the witnesses' testimony, just as if it had been given here in court from the witness stand.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 2.02

**INSTRUCTION NO. \_\_\_\_\_**

***Proposed by Government***

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

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 2.03



**INSTRUCTION NO. \_\_\_\_\_**

Even though no evidence has been introduced about it, I have decided to accept as proved the fact that:

28.35 grams = 1 ounce

1000 grams = 1 kilogram

35.27 ounces = 1 kilogram

I believe this fact [is of such common knowledge] [can be so accurately and readily determined from (name accurate source)] that it cannot reasonably be disputed. You may therefore treat this fact as proved, even though no evidence was brought out on the point. As with any fact, however, the final decision whether or not to accept it is for you to make and you are not required to agree with me.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 2.04

**INSTRUCTION NO. \_\_\_\_\_**

***Proposed by Government***

You are about to hear [have heard] tape recordings of conversations. These conversations were legally recorded, and you may consider the recordings just like any other evidence.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 2.05

**INSTRUCTION NO. \_\_\_\_\_**

***Proposed by Government***

As you have heard, there is a typewritten transcript of the tape recordings you are about to hear. That transcript also undertakes to identify the speakers engaged in the conversation.

You are permitted to have the transcript for the limited purpose of helping you follow the conversation as you listen to the tape recording, and also to help you keep track of the speakers. Differences in meaning between what you hear in the recording and read in the transcript may be caused by such things as the inflection in a speaker's voice. It is what you hear, however, and not what you read, that is the evidence.

You are specifically instructed that whether the transcript correctly or incorrectly reflects the conversation or the identity of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcript, and upon your own examination of the transcript in relation to what you hear on the tape recording. If you decide that the transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 2.06

**INSTRUCTION NO. \_\_\_\_\_**

***Proposed by Defendant (Statement by Defendant)***

You have heard testimony that [the defendant] [defendant (name)] made a statement to (name of person or agency). It is up to you to decide:

*First*, whether [the defendant] [defendant (name)] made the statement; and

*Second*, if so, how much weight you should give it.<sup>1</sup>

[In making these two decisions, you should consider all of the evidence about the statement, including the circumstances under which it was made [the statement may have been made.]

**INSTRUCTION NO. \_\_\_\_\_**

You have heard evidence that the defendant has been previously convicted of the crimes of distribution and possession of a controlled substance. You may consider this evidence only if you find it is more likely true than not true. This is a lower standard than proof beyond a reasonable doubt. If you find that this evidence is more likely true than not true, you may consider it to help you decide whether the defendant had the motive, knowledge, intent, and/or opportunity to participate in the conspiracy which is charged in this case. You should give it the weight and value you believe it is entitled to receive. If you find that it is not more likely true than not true, then you shall disregard it.

Remember, even if you find that a defendant may have committed a similar act or acts in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of prior acts only on the issues of motive, knowledge, intent, and/or opportunity.

**INSTRUCTION NO. \_\_\_\_\_**

You have heard evidence that the defendant was previously convicted of crimes. You may use that evidence only to help you decide whether to believe his testimony and how much weight to give it. That evidence does not mean that he committed the crime charged here, and you must not use that evidence as any proof of the crime charged in this case.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 2.16

**INSTRUCTION NO. \_\_\_\_\_**

You have heard evidence that certain witnesses were once convicted of a crime or crimes. You may use that evidence only to help you decide whether to believe these witnesses and how much weight to give their testimony.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 2.18

**INSTRUCTION NO. \_\_\_\_\_**

You have heard evidence that certain witnesses pleaded 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 these witnesses' guilty pleas only for the purpose of determining how much, if at all, to rely upon those witnesses' testimony.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 2.19



**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 or during 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. Again, *all* instructions, whenever given and whether in writing or not, must be followed.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
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.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 3.02

**INSTRUCTION NO. \_\_\_\_\_**

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, the facts that have been stipulated -- this is, formally agreed to by the parties, the facts that have been judicially noticed -- this is, facts which I say you may, but are not required to, accept as true, even without evidence.

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. \_\_\_\_\_**

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 mis-recollection 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 the defendant in the same manner as you judge the testimony of any other witness.

**INSTRUCTION NO. \_\_\_\_\_**

***Description of Charges***

The indictment in this case charges the defendant with two different crimes. Under Count I, the indictment charges that the defendant committed the crime of conspiracy to distribute cocaine and cocaine base.

Under Count VIII, the indictment charges that the defendant committed the crime of distribution of cocaine base. The defendant has pleaded not guilty to each of those charges.

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, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. 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 each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon a defendant to prove that he or she 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.

**INSTRUCTION NO. \_\_\_\_\_**

The charges in this case are as follows:

In Count One, the defendant, Theodore S. Wiggins, is charged with conspiring with others to distribute more than five (5) kilograms of a mixture or substance containing cocaine, and more than two hundred, eighty (280) grams of a mixture or substance containing cocaine base (or “crack” cocaine) between the dates of on or about July 1, 2009, and on or about June 9, 2010.

In Count Eight, defendant Theodore S. Wiggins is charged with distributing some amount of a mixture or substance containing cocaine base (“crack” cocaine), on or about April 15, 2010.

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. Thus 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 essential element of the crime charged.

Keep in mind that you must consider, separately, each crime charged against the defendant, and must return a separate verdict for each of those crimes charged.

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.

INSTRUCTION NO. \_\_\_\_\_

*Proposed by Government*

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.

*Conley version proposed by Defendant*

The instruction approved in *Conley* is as follows:

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense--the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly. Putting it in another way, a reasonable doubt means a doubt based on reason and not the mere possibility of innocence.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 3.11

**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 any 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 forms are simply the written notices of the decisions that you reach in this case. You will take these forms to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the forms, sign and date them, and advise the marshal or bailiff that you are ready to return to the courtroom.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 3.12

**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.

**INSTRUCTION NO. \_\_\_\_\_**

***Proposed by Defendant***

You have heard testimony about the character and reputation of [(name of witness)] [the defendant] [defendant (name)] for truthfulness. You may consider this evidence only in deciding whether to believe the testimony of [(name of witness)] [the defendant] [defendant (name)] and how much weight to give to it.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 4.02

**INSTRUCTION NO. \_\_\_\_\_**

You have heard evidence that (name of witness) 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.

SOURCE: [Eighth Circuit Model Criminal Jury Instructions \(2009\)](#)  
No. 4.04

**INSTRUCTION NO. \_\_\_\_\_**

***Proposed by Defendant***

You have heard testimony from (name of witness) who stated that [he] [she] participated in the crime charged against the defendant. [His] [Her] testimony was received in evidence and may be considered by you. You may give [his] [her] testimony such weight as you think it deserves. Whether or not [his] [her] testimony may have been influenced by [his] [her] desire to please the Government or to strike a good bargain with the Government about [his] [her] own situation is for you to determine.

SOURCE: *Eighth Circuit Model Criminal Jury Instructions (2009)*  
No. 4.05

**INSTRUCTION NO. \_\_\_\_\_**

***Proposed by Defendant***

You have heard evidence that (name of witness) has an arrangement with the Government under which [he] [she] [gets paid] [receives (describe benefit)] for providing information to the Government. [His] [Her] testimony was received in evidence and may be considered by you. You may give [his] [her] testimony such weight as you think it deserves. Whether or not [his] [her] information or testimony may have been influenced by [such payments] [receiving (describe benefit)] is for you to determine.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 4.06

**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.

Plaintiff's Instruction No. \_\_\_\_

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 4.10

**INSTRUCTION NO. \_\_\_\_\_**

The crime of conspiracy as charged in Count One of the Indictment, has four elements, which are:

- One*, between on or about July 1, 2009, and on or about June 9, 2010, two or more persons reached an agreement or came to an understanding to distribute cocaine and/or cocaine base ("crack" cocaine);
- Two*, the 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 defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding; and
- Four*, the agreement or understanding involved five kilograms or more of cocaine, and/or 280 grams or more of cocaine base ("crack" cocaine).

If you find these four elements unanimously and beyond a reasonable doubt, then you must find the defendant guilty of the crime of conspiracy as described in the Indictment, that is a conspiracy to distribute five kilograms or more of cocaine and/or 280 grams or more of cocaine base ("crack" cocaine). Record your determination on the Verdict Form which will be submitted to you with these instructions.

If you do not find the defendant guilty of this crime under Count One because of the amounts alleged in that count, then go on to consider whether the defendant conspired to distribute some lesser amounts either of the controlled substances alleged. The verdict forms which will be provided for you will have sections for you to record the amounts of each of these controlled substances, if any, for which you find each of the defendants individually responsible.

Remember that the quantity of controlled substances involved in the agreement or understanding includes the controlled substances the defendant possessed for personal use or 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 that



those acts and the amounts of controlled substance involved in those acts were reasonably foreseeable by the defendant.]

If all of the required elements have been proved beyond a reasonable doubt as to any defendant, then you must find that defendant guilty of the crime charged in Count One; otherwise, you must find the defendant not guilty.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 3.09 and 6.21.846A.1

**INSTRUCTION NO. \_\_\_\_\_**

I am about to instruct you regarding several definitions within the crime of conspiracy. You should apply these instructions to your deliberations on Count One, unless I instruct you otherwise.

The Government must prove that the 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.

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 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 that 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 that defendant.

**INSTRUCTION NO. \_\_\_\_\_**

To assist you in determining whether there was an agreement or understanding to distribute the controlled substances alleged in the conspiracy in Count One, you are advised that the elements of the offense of distribution of a controlled substance are:

*One,* the defendant intentionally transferred a controlled substance to another person;  
and

*Two,* at the time of the transfer, the defendant knew that the substance transferred was a controlled substance.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 5.06C

INSTRUCTION NO. \_\_\_\_\_

**Proposed by Defendant**

It is not necessary that the act done in furtherance of the conspiracy be in itself unlawful. It may be perfectly innocent in itself.

It is not necessary that the defendant have personally committed the act, known about it, or witnessed it. It makes no difference which of the conspirators did the act. This is because a conspiracy is a kind of "partnership" so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts of every other member done to further their scheme.

[It is not necessary that the Government prove, beyond a reasonable doubt, that more than one act was done in furtherance of the conspiracy. It is sufficient if the Government proves beyond a reasonable doubt, *one* such act; but in that event, in order to return a verdict of guilty, you must unanimously agree upon which act was done.]

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 5.06D

**INSTRUCTION NO. \_\_\_\_\_**

It is not necessary for the Government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 506E

**INSTRUCTION NO. \_\_\_\_\_**

The indictment charges a conspiracy to commit two separate crimes. It is not necessary for the Government to prove a conspiracy to commit *both* of those crimes. It would be sufficient if the Government proves, beyond a reasonable doubt, a conspiracy to commit *one* of those crimes. In that event, to return a verdict of guilty, you must unanimously agree *which* of the two crimes was the subject of the conspiracy. If you are unable to unanimously agree, you cannot find the defendant guilty of conspiracy. In this case, you must decide which of the controlled substances, if any, the defendant conspired to distribute and record your unanimous verdict on the form provided.

SOURCE: [Eighth Circuit Model Criminal Jury Instructions \(2009\)](#)  
No. 5.06F

**INSTRUCTION NO. \_\_\_\_\_**

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. \_\_\_\_\_**

The crime of distributing cocaine, as charged in Count Eight of the Indictment, has two elements, which are:

*One*, the defendant intentionally transferred cocaine base to another person; and

*Two*, at the time of the transfer, the defendant knew that it was cocaine base;

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

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 6.21.841B

**INSTRUCTION NO. \_\_\_\_\_**

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

SOURCE: Eighth Circuit Model Criminal Jury Instructions (2009)  
No. 7.05

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 10-00162-16-CR-W-FJG
	)	
THEODORE S. WIGGINS,	)	
	)	
Defendant.	)	

**VERDICT FORM  
COUNT ONE**

We, the jury, find Defendant **THEODORE S. WIGGINS**, \_\_\_\_\_ [guilty/not guilty]

of the crime of conspiracy to distribute five (5) kilograms or more of a mixture or substance containing cocaine; or two hundred, eighty (280) grams or more of a mixture or substance containing cocaine base ("crack" cocaine), as charged in Count One of the Indictment.

\_\_\_\_\_  
(Date) \_\_\_\_\_  
(Foreperson)

Note: If you unanimously find the defendant, Theodore S. Wiggins, guilty of the above crime, have your foreperson write "guilty" in the above blank space, sign and date this verdict form. Do not consider the following verdict form.

If you unanimously find the defendant, Theodore S. Wiggins, not guilty of the above charge, have your foreperson write "not guilty" in the above blank space. You then must consider whether the defendant is guilty of conspiracy to distribute the alleged controlled substances in other amounts on the following verdict form.

If you are unable to reach a unanimous decision on the above charge, leave the space blank and decide whether the defendant is guilty of a lesser-included offense on the following verdict form.

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 10-00162-16-CR-W-FJG
	)	
THEODORE S. WIGGINS,	)	
	)	
Defendant.	)	

**VERDICT FORM**

Lesser-Included Offenses within COUNT ONE:

We, the jury, find Defendant **THEODORE S. WIGGINS**, \_\_\_\_\_  
[guilty/not guilty]

of the crime of conspiracy to distribute cocaine and/or cocaine base in the following amounts as lesser-included offenses within Count One of the Indictment: (Place an X in the appropriate block; if you do not find that the defendant conspired to distribute any amount of one of the listed controlled substances, leave all blocks for that substance blank)

- \_\_\_\_\_ 5 Kilograms or more of cocaine
- \_\_\_\_\_ At least 500 Grams but less than 5 kilograms of cocaine
- \_\_\_\_\_ Less than 500 grams of cocaine
- \_\_\_\_\_ Two hundred, eighty (280) grams or more of cocaine base
- \_\_\_\_\_ At least 28 but less than 280 grams of cocaine base
- \_\_\_\_\_ Less than 28 grams of cocaine base

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Foreperson)

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 10-00162-16-CR-W-FJG
	)	
ALFONSO VELO, et al.	)	
	)	
Defendants.	)	

**VERDICT FORM  
COUNT EIGHT**

We, the jury, find Defendant **THEODORE S. WIGGINS**, \_\_\_\_\_  
[guilty/not guilty]

of distributing some quantity of a mixture or substance containing cocaine base ("crack" cocaine),  
as charged in Count Eight of the Indictment.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Foreperson)