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

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

JURY INSTRUCTIONS

INSTRUCTION NO. 1

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 Theodore S. Wiggins by the United States Government. The defendant is charged in what is called an indictment, which I will summarize as follows:

In Count One of the Indictment, 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 280 grams of a mixture or substance containing cocaine base, also known as "crack cocaine," between the dates of on or about July 1, 2009, and on or about June 9, 2010.

In Count Eight of the Indictment, defendant Theodore S. Wiggins is charged with distributing some amount of a mixture or substance of 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 that have been established by the evidence. You will then apply those facts to the law that I give you in these and in my other instructions and in that way reach your verdicts. You are the sole judges of the facts, but you must follow my instructions, whether you agree with them or not. You have taken an oath to do so.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, 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 verdicts 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.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 1.01 (2011) (as modified).

INSTRUCTION NO. 2

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 (4) elements, which are:

One, between on or about July 1, 2009, and June 9, 2010, two (2) or more persons reached an agreement or came to an understanding to distribute controlled substances, that is, cocaine and 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 (5) kilograms or more of cocaine, and a mixture or substance containing fifty (50) grams or more of crack cocaine.

The crime of distributing crack cocaine, as charged in Count Eight of the Indictment, has two (2) elements, which are:

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

Two, at the time of the transfer, the defendant knew that it was crack cocaine.

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 final instructions 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 govern.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 1.02 (2011) (as modified).

INSTRUCTION NO. 3

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 that 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 (1) 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: 8th Cir. Model Crim. Jury Instr. No. 1.03 (2011) (as modified).

INSTRUCTION NO. 4

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, 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 you believe.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 1.05 (2011) (as modified).

INSTRUCTION NO. 5

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. Do not let note-taking distract you so that you do not hear other answers by the witness. Ms. Diefenbach will provide each of you with a pad of paper and a pen or pencil.

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

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 1.06A (2011) (as modified).

INSTRUCTION NO. 6

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: 8th Cir. Model Crim. Jury Instr. No. 1.07 (2011) (as modified).

INSTRUCTION NO. 7

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

First, do not talk to or communicate 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 verdicts.

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 verdicts have been accepted by me. If someone should try to talk to you about the case during the trial, please immediately report it to Ms. Diefenbach, and she will 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 to or visit with you.

Fifth, it may be necessary for you to tell your family, close friends, teachers, coworkers, or employer about your participation in this trial. You can explain when you are required to be in court and can warn them not to ask you about this case, tell you anything they know or think they know about this case, or discuss this case in your presence. You must not communicate

with anyone or post information about the parties, witnesses, participants, charges, evidence, or anything else related to this case. You must not tell anyone anything about the jury's deliberations in this case until after I accept your verdicts or until I give you specific permission to do so. If you discuss the case with someone other than your fellow jurors during deliberations, it could create the perception that you have decided the case or that you may be influenced in your verdicts by their opinions. That would not be fair to the parties and it may result in the verdicts being thrown out and the case having to be retried. During the trial, while you are in the courthouse and after you leave for the day, do not provide any information to anyone by any means about this case. Thus, for example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or Website such as Facebook, MySpace, YouTube, or Twitter, or any other way to communicate to anyone any information about this case until I accept your verdicts.

Sixth, do not do any research – on the Internet, in libraries, in the newspapers, or in any other way – or make any investigation about this case on your own. Do not visit or view any place discussed in this case and do not use Internet programs or other devices to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or me.

Seventh, do not read any news stories or articles in print, or on the Internet, or in any blog, 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 television 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.

The parties have a right to have the case decided only on evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdicts may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this country and you will have done an injustice. It is very important that you abide by these rules. Remember, you have taken an oath to do so.

Eighth, do not make up your mind during the trial about what the verdicts 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: 8th Cir. Model Crim. Jury Instr. No. 1.08 (2011) (as modified).

INSTRUCTION NO. 8

The trial will proceed in the following manner:

First, the Government attorney will make an opening statement. Next, the defendant's attorney may, but does 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 defendant may cross-examine any witnesses. 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's counsel may cross-examine them.

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

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 1.09 (2011).

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 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: 8th Cir. Model Crim. Jury Instr. No. 3.01 (2011).

INSTRUCTION NO. 10

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 just verdicts, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 3.02 (2011).

INSTRUCTION NO. 11

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 – that is, formally agreed to by the parties; and facts that 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 that have been established by the evidence in this 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.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 3.03 (2011) (as modified).

INSTRUCTION NO. 12

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, 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 the 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 any evidence you believe.

In deciding whether to believe a witness, keep in mind 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.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 3.04 (2011) (as modified).

INSTRUCTION NO. 13

You have heard evidence that certain witnesses made a plea agreement with the Government. This testimony was received in evidence and may be considered by you. You may give this testimony such weight as you think it deserves. Whether this testimony may have been influenced by the plea agreement is for you to determine.

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

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 4.04 (2011) (as modified).

INSTRUCTION NO. 14

You have heard testimony from certain witnesses who stated that they participated in the crime charged against the defendant. This testimony was received in evidence and may be considered by you. You may give this testimony such weight as you think it deserves. Whether this testimony may have been influenced by a desire to please the Government or to strike a good bargain with the Government about the witnesses' own situation is for you to determine.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 4.05A (2011) (as modified).

INSTRUCTION NO. 15

You have heard evidence that certain witnesses had an arrangement with the Government under which they get paid for providing information to the Government. This testimony was received in evidence and may be considered by you. You may give this testimony such weight as you think it deserves. Whether the information or testimony may have been influenced by such payments is for you to determine.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 4.06 (2011) (as modified).

INSTRUCTION NO. 16

You have heard testimony from persons described as experts. Persons who, by their 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.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 4.10 (2011) (as modified).

INSTRUCTION NO. 17

The Indictment in this case charges the defendant with two (2) different crimes. Under Count One, the defendant is charged with conspiring with others to distribute more than five (5) kilograms of a mixture or substance containing cocaine and more than 280 grams of a mixture or substance containing crack cocaine between the dates of on or about July 1, 2009, and on or about June 9, 2010.

Under Count Eight, the Indictment charges that the defendant committed the crime of distributing some amount of a mixture or substance of crack cocaine, on or about April 15, 2010.

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, 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 is innocent. Accordingly, the fact the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 3.06 (2011) (as modified).

INSTRUCTION NO. 18

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 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.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 3.11 (2011).

INSTRUCTION NO. 19

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

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 4.01 (2011) (as modified).

INSTRUCTION NO. 20

The crime of conspiracy as charged in Count One of the Indictment has four (4) elements, which are:

One, between on or about July 1, 2009, and on or about June 9, 2010, two (2) or more persons reached an agreement or came to an understanding to distribute cocaine or 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 (5) kilograms or more of cocaine or 280 grams or more of crack cocaine.

If you find these four (4) 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 (5) kilograms or more of cocaine or 280 grams or more of crack cocaine. Record your determination on Verdict Form A that 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 of either cocaine or crack cocaine in Verdict Form B. Verdict Form B will be provided for you and will have sections for you to record the amounts of each of these controlled substances, if any, for which you find the defendant 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 were reasonably foreseeable by the defendant.

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

SOURCES: 8th Cir. Model Crim. Jury Instr. Nos. 3.09, 6.21.846A.1 (2011).

INSTRUCTION NO. 21

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.

The Government must prove the defendant reached an agreement or understanding with at least one (1) other person. It makes no difference whether that person is not a defendant or named in the Indictment. You do not have to find that all of the persons charged with a crime 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, 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 a conspiracy, 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 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 the 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 defendant.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 5.06B (2011) (as modified).

INSTRUCTION NO. 22

To assist you in determining whether there was an agreement or understanding to distribute controlled substances as alleged in Count One, you are advised that the elements 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 the substance transferred was a controlled substance.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 5.06C (2011).

INSTRUCTION NO. 23

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

SOURCE: 8th Cir. Model Crim. Jury Instr. 5.06E (2011) (as modified).

INSTRUCTION NO. 24

The Indictment charges a conspiracy to commit two (2) 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 (2) crimes was the subject of the conspiracy. If you are unable to unanimously agree, you cannot find the defendant guilty of conspiracy. However, if you unanimously agree, you must decide which of the controlled substances, if any, the defendant conspired to distribute and record your unanimous verdict on either Verdict Form A or Verdict Form B.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 5.06F (2011) (as modified).

INSTRUCTION NO. 25

You may consider acts knowingly done and statements knowingly made by the 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, because 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.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 5.06I (2011) (as modified).

INSTRUCTION NO. 26

The crime of distributing crack cocaine, as charged in Count Eight of the Indictment, has two (2) elements, which are:

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

Two, at the time of the transfer, the defendant knew that it was crack cocaine.

If both of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty on Verdict Form C; otherwise, you must find the defendant not guilty on Verdict Form C.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 6.21.841B (2011) (as modified).

INSTRUCTION NO. 27

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 that 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.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 7.05 (2011) (as modified).

INSTRUCTION NO. 28

In conducting your deliberations and returning your verdicts, 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 (1) 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 Ms. Diefenbach, signed by one (1) or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember, you should not tell anyone – including me – how your votes stand numerically.

Fifth, your verdicts must be based solely on the evidence and on the law that I have given to you in my instructions. The verdicts, whether guilty or not guilty, must be unanimous.

Nothing I have said or done is intended to suggest what your verdicts should be – that is entirely for you to decide.

Finally, the Verdict Forms are simply the written notices of the decisions you reach in this case. You will take these Verdict Forms to the jury room and when each of you has agreed on the verdicts, your foreperson will fill in the Verdict Forms, sign and date them, and advise Ms. Diefenbach that you are ready to return to the courtroom.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 3.12 (2011) (as modified).

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

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

VERDICT FORM A
COUNT ONE

We, the jury, find the 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 280 grams or more of a mixture or substance containing crack cocaine, as charged in Count One of the Indictment.

_____ _____
Date Foreperson

Note: If you unanimously find defendant Theodore S. Wiggins guilty of the above crime, have your foreperson write "guilty" in the above blank space and sign and date this Verdict Form. Do not consider Verdict Form B but go on to Verdict Form C.

If you unanimously find defendant Theodore S. Wiggins not guilty of conspiring to distribute five (5) or more kilograms of a mixture or substance containing cocaine; or 280 grams or more of a mixture or substance containing crack cocaine, have your foreperson write "not guilty" in the above blank space and sign and date this Verdict Form. You then must consider

whether the defendant is guilty of conspiracy to distribute cocaine or crack cocaine in other amounts on Verdict Form B.

If you are unable to reach a unanimous decision on whether defendant Theodore S. Wiggins was guilty of conspiring to distribute five (5) or more kilograms of a mixture or substance containing cocaine; or 280 grams or more of a mixture or substance containing crack cocaine, leave the space blank and decide whether the defendant is guilty of conspiracy to distribute controlled substances in other amounts on Verdict Form B.

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 11.02 (2011) (as modified).

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

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

VERDICT FORM B
LESSER-INCLUDED OFFENSES WITHIN COUNT ONE

We the jury, find the defendant Theodore S. Wiggins _____
(guilty/not guilty)
of the crime of conspiracy to distribute cocaine or crack cocaine in the following amounts as lesser-included offenses within Count One of the Indictment:

Note: Place an X in the appropriate block. If you do not find the defendant conspired to distribute any amount of one (1) of the listed controlled substances, leave all blocks for that substance blank.

_____ at least 500 grams but less than five (5) kilograms of cocaine

_____ less than 500 grams of cocaine

_____ at least twenty-eight (28) but less than 280 grams of crack cocaine

_____ less than twenty-eight (28) grams of crack cocaine

_____ _____
Date Foreperson

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 11.02 (2011) (as modified).

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

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

VERDICT FORM C
COUNT EIGHT

We, the jury, find defendant Theodore S. Wiggins _____
(guilty/not guilty)
of distributing some quantity of a mixture or substance containing crack cocaine as charged in Count Eight of the Indictment.

_____ _____
Date Foreperson

SOURCE: 8th Cir. Model Crim. Jury Instr. No. 11.01 (2011) (as modified).