IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

_____

,

Plaintiff,

vs. **Cr. No.**

,

Defendant.

<u>COURT'S INSTRUCTIONS TO THE JURY</u>

MEMBERS OF THE JURY:

You have now heard all of the evidence in the case.

It becomes my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in the case.

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what evidence is relevant under the law for your consideration. It is also my duty at the end of the trial to instruct you on the law applicable to the case.

You, as jurors, are the judges of the facts. But in determining what actually happened in this case — that is, in reaching your decision as to the facts — it is your sworn duty to follow the law I am now in the process of defining for you.

And you must follow all of my instructions as a whole. You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. That is, you must not substitute or follow your own idea or opinion as to what the law is or ought to be. It is your duty to apply the law as I give it to you, regardless of the consequences.

By the same token it is also your duty to base your verdict solely upon the evidence in the case, without prejudice or sympathy.

You, as jurors, are the judges of the facts. But in determining what actually happened in this case — that is, in reaching your decision as to the facts — it is your sworn duty to follow the law I am now in the process of defining for you. Unless otherwise stated you should consider each instruction to apply separately and individually to each defendant on trial.

And you must follow all of my instructions as a whole. You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. That is, you must not substitute or follow your own idea or opinion as to what the law is or ought to be. It is your duty to apply the law as I give it to you, regardless of the consequences.

By the same token it is also your duty to base your verdict solely upon the evidence in the case, without prejudice or sympathy.

The indictment or formal charge against a defendant is not evidence of guilt. Indeed, a defendant is presumed by the law to be innocent. The law does not require a defendant in a criminal case to prove the defendant's innocence or to testify or to produce any evidence at all. The government has the burden of proving a defendant guilty beyond a reasonable doubt, and if it fails to do so you must acquit the defendant.

Thus, while the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that a person would not hesitate to rely and act upon it in the most important of affairs.

The indictment or formal charge against a defendant is not evidence of guilt. Indeed, a defendant is presumed by the law to be innocent. The law does not require a defendant in a criminal case to prove the defendant's innocence or to testify or to produce any evidence at all. A defendant has an absolute right not to testify and may not be compelled to testify. No inference of any kind should be drawn from the election of a defendant not to testify, and that fact should not be considered by you in any way or even discussed in your deliberations. The government has the burden of proving a defendant guilty beyond a reasonable doubt, and if it fails to do so you must acquit the defendant.

Thus, while the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that a person would not hesitate to rely and act upon it in the most important of affairs.

Title 18, United States Code, Section 371, makes it a crime for anyone to conspire with someone else to commit an offense against the laws of the United States. In this case, the defendant is charged with conspiring to _____.

A "conspiracy" is an agreement between two or more persons to join together to accomplish some unlawful purpose. It is a kind of "partnership in crime" in which each member becomes the agent of every other member.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That two or more persons made an agreement to commit the crime of _____ as charged in the indictment;

Second: That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and

Third: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the indictment, in order to accomplish some object or purpose of the conspiracy.

Fourth: That there was interdependence among the defendant and the other person or persons joining in the agreement to commit the crime. Interdependence means that the participants intended to act together for their mutual benefit to accomplish a shared, unlawful purpose.

One may become a member of a conspiracy without knowing all the details of the unlawful scheme or the identities of all the other alleged conspirators. If a defendant understands the unlawful nature of a plan or scheme and knowingly and intentionally joins in that plan or scheme on one occasion, that is sufficient to convict that defendant of conspiracy even though the defendant had not participated before and even though the defendant played only a minor part.

The government need not prove that the alleged conspirators entered into any formal agreement, or that they directly stated between themselves all the details of the scheme. Similarly, the government need not prove that all of the details of the scheme alleged in the indictment were actually agreed upon or carried out. Nor must it prove that all of the persons alleged to have been members of the conspiracy were such, or that the alleged conspirators actually succeeded in accomplishing their unlawful objectives.

Mere presence at the scene of an event, even with knowledge that a crime is being committed, or the mere fact that certain persons may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy. Also, 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 conspirator.

Title 21, United States Code, Section 846, makes it a crime for anyone to conspire with someone else to commit an offense against the laws of the United States. In this case, the defendant is charged with conspiring to _____.

A "conspiracy" is an agreement between two or more persons to join together to accomplish some unlawful purpose. It is a kind of "partnership in crime" in which each member becomes the agent of every other member.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That two or more persons made an agreement to commit the crime of _____as charged in the indictment; and

Second: That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose.

Third: That there was interdependence among the defendant and the other person or persons joining in the agreement to commit the crime. Interdependence means that the participants intended to act together for their mutual benefit to accomplish a shared, unlawful purpose.

One may become a member of a conspiracy without knowing all the details of the unlawful scheme or the identities of all the other alleged conspirators. If a defendant understands the unlawful nature of a plan or scheme and knowingly and intentionally joins in that plan or scheme on one occasion, that is sufficient to convict that defendant for conspiracy even though the defendant had not participated before and even though the defendant played only a minor part.

The government need not prove that the alleged conspirators entered into any formal agreement, or that they directly stated between themselves all the details of the scheme. Similarly,

the government need not prove that all of the details of the scheme alleged in the indictment were actually agreed upon or carried out. Nor must it prove that all of the persons alleged to have been members of the conspiracy were such, or that the alleged conspirators actually succeeded in accomplishing their unlawful objectives.

Mere presence at the scene of an event, even with knowledge that a crime is being committed, or the mere fact that certain persons may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy. Also, 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 conspirator.

Title 21, United States Code, Section 963, makes it a crime for anyone to conspire with someone else to commit an offense against the laws of the United States. In this case, the defendant is charged with conspiring to _____.

A "conspiracy" is an agreement between two or more persons to join together to accomplish some unlawful purpose. It is a kind of "partnership in crime" in which each member becomes the agent of every other member.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That two or more persons made an agreement to commit the crime of _____ as charged in the indictment; and

Second: That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose.

Third: That there was interdependence among the defendant and the other person or persons joining in the agreement to commit the crime. Interdependence means that the participants intended to act together for their mutual benefit to accomplish a shared, unlawful purpose.

One may become a member of a conspiracy without knowing all the details of the unlawful scheme or the identities of all the other alleged conspirators. If a defendant understands the unlawful nature of a plan or scheme and knowingly and intentionally joins in that plan or scheme on one occasion, that is sufficient to convict that defendant for conspiracy even though the defendant had not participated before and even though the defendant played only a minor part.

The government need not prove that the alleged conspirators entered into any formal agreement, or that they directly stated between themselves all the details of the scheme. Similarly,

the government need not prove that all of the details of the scheme alleged in the indictment were actually agreed upon or carried out. Nor must it prove that all of the persons alleged to have been members of the conspiracy were such, or that the alleged conspirators actually succeeded in accomplishing their unlawful objectives.

Mere presence at the scene of an event, even with knowledge that a crime is being committed, or the mere fact that certain persons may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy. Also, 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 conspirator.

Title 21, United States Code, Section 841(a)(1), makes it a crime for anyone knowingly or intentionally to possess a controlled substance with intent to distribute it.

_____ is a controlled substance within the meaning of this law.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the defendant knowingly possessed a controlled substance;

Second: That the substance was in fact _____;

Third: That the defendant possessed the substance with the intent to distribute it; and

Fourth: That the quantity of the substance was at least _____.

To "possess with intent to distribute" simply means to possess with intent to deliver or transfer possession of a controlled substance to another person, with or without any financial interest in the transaction.

Title 18, United States Code, Section 2, makes it a crime to aid, abet, counsel, command, induce or procure the commission of an offense against the United States.

Thus, the guilt of a defendant may be established without proof that the defendant personally

did every act constituting the offense alleged. The law recognizes that, ordinarily, anything someone can do personally may also be accomplished through the direction of another person as an agent, or by acting in concert with, or under the direction of, another person or persons in a joint effort or enterprise.

If another person is acting under the direction of the defendant or if the defendant joins another person and performs acts with the intent to commit a crime, then the law holds the defendant responsible for the acts and conduct of such other persons just as though the defendant had committed the acts or engaged in such conduct.

Before any defendant may be held criminally responsible for the acts of others it is necessary that the accused deliberately associate in some way with the crime and participate in it with the intent to bring about the crime.

Of course, mere presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish that a defendant either directed or aided and abetted the crime unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

In other words, you may not find the defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant voluntarily participated in its commission with the intent to violate the law.

For you to find the defendant guilty of the crime of aiding and abetting, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the offense of _____ was committed by some person;

Second: That the defendant associated with the criminal venture;

Third: That the defendant purposefully participated in the criminal venture; and

Fourth: That the defendant sought by action to make that venture successful.

"To associate with the criminal venture" means that the defendant shared the criminal intent of the principal. This element cannot be established if the defendant had no knowledge of the principal's criminal venture.

"To participate in the criminal venture" means that the defendant engaged in some affirmative conduct designed to aid the venture or assisted the principal of the crime.

You will note that the indictment charges that the offense was committed "on or about" a certain date. The government does not have to prove that the crime was committed on that exact date, so long as the government proves beyond a reasonable doubt that the defendant committed the crime on a date reasonably near the date alleged.

The crimes charged are serious crimes each of which requires proof of specific intent before an accused can be convicted of that crime. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the government must prove that the defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

An act or a failure to act is "knowingly" done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The word "willfully," as that term is used from time to time in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or disregard the law.

The crimes charged in this case are serious crimes which require proof of specific intent before an accused can be convicted of those crimes. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the government must prove that the defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

An act or a failure to act is "knowingly" done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The law recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention, at a given time, to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

You may find that the element of possession, as that term is used in these instructions, is present if you find beyond reasonable doubt that the defendant had actual or constructive possession, either alone or jointly with others.

With respect to the question of whether or not a defendant intended to distribute any controlled substance, you are instructed that the quantity of the controlled substance allegedly possessed by a defendant, if proved, may be considered by the jury in light of all of the other evidence in the case in determining whether or not a defendant intended to distribute any such substance. Whether or not evidence of a particular quantity of substance shows an intent to distribute the same, and the significance to be attached to any such evidence, are matters exclusively within the province of the jury.

We have just talked about what the government has to prove for you to convict a defendant of [the greater crime]. As to each defendant, your first task is to decide whether the government has proved, beyond a reasonable doubt, that the defendant committed that alleged crime. If your verdict on that alleged crime is guilty, you are finished with Count I as to that defendant. But if your verdict is not guilty, or if you are unable to reach a verdict, you should go on to consider whether the defendant is guilty of [a lesser crime]. You should find the defendant guilty of [a lesser crime] if the government has proved, beyond a reasonable doubt, that the defendant did everything we discussed before except that it did not prove that the defendant [the missing element of the greater crime].

To put it another way, a defendant is guilty of [a lesser crime] if the following things are proved beyond a reasonable doubt:

First:

Second:

Third:

If your verdict is that the defendant is guilty of [the greater crime], you need go no further. But if your verdict on that crime is not guilty, or if you are unable to reach a verdict on it, you should consider whether the defendant has been proved guilty of [a lesser crime].

Of course, if the government has not proved beyond a reasonable doubt that a defendant committed [a lesser crime], your verdict as to that defendant must be not guilty of all charges.

We have just talked about what the government has to prove for you to convict a defendant of sexual abuse of a minor under 18 U.S.C. § 2243(a). Your first task is to decide whether the government has proved, beyond a reasonable doubt, that the defendant committed that alleged crime. If your verdict on that alleged crime is guilty, you are finished. But if your verdict as to that alleged crime is not guilty, or if you are unable to reach a verdict, you should go on to consider whether the defendant is guilty of abusive sexual contact under 18 U.S.C. § 2244(a).

To find the defendant guilty of the lesser included crime of abusive sexual contact, in violation of Section 2244(a), the government must prove each of the following elements beyond a reasonable doubt:

First: that the defendant knowingly engaged in sexual contact with _____;

Second: that at the time of the sexual contact _____ had attained the age of 12 years of age but had not yet attained the age of 16 years;

Third: that the defendant was at least four (4) years older than _____;

Fourth: that the incident occurred in Indian Country; and

Fifth: that this happened within the State and District of New Mexico, on or about _____.

If your verdict is that the defendant is guilty of sexual abuse of a minor under 18 U.S.C. § 2243(a), you need go no further. But if your verdict on that crime is not guilty, or if you are unable to reach a verdict on it, you should consider whether the defendant has been proved guilty of abusive sexual contact under 18 U.S.C. § 2244(a).

Of course, if the government has not proved beyond a reasonable doubt that the defendant committed either crime, your verdict as to the defendant must be not guilty of all charges.

The defendant asserts that the defendant was a victim of entrapment as to the offenses charged in the indictment.

Where a defendant has no previous intent or purpose to violate the law, but is induced or persuaded by law enforcement officers or their agents to commit a crime, the defendant is a victim of entrapment, and the law as a matter of policy forbids the defendant's conviction in such a case.

On the other hand, where a defendant already has the readiness and willingness to break the law, the mere fact that government agents provide what appears to be a favorable opportunity is not entrapment. For example, it is not entrapment for a government agent to pretend to be someone else and to offer, either directly or through an informer or other decoy, to engage in an unlawful transaction.

If, then, you should find beyond a reasonable doubt from the evidence in the case that, before anything at all occurred respecting the alleged offense involved in this case, the defendant was ready and willing to commit a crime such as charged in the indictment, whenever opportunity was afforded, and that government officers or their agents did no more than offer the opportunity, then you should find that the defendant is not a victim of entrapment.

On the other hand, if the evidence in the case should leave you with a reasonable doubt whether the defendant had the previous intent or purpose to commit an offense of the character charged, apart from the inducement or persuasion of some officer or agent of the government, then it is your duty to find the defendant not guilty.

The defendant, _____, asserts that he was a victim of entrapment as to the offenses charged in the indictment.

Where a defendant has no previous intent or purpose to violate the law, but is induced or persuaded by law enforcement officers or their agents to commit a crime, the defendant is a victim of entrapment, and the law as a matter of policy forbids the defendant's conviction in such a case.

On the other hand, where a defendant already has the readiness and willingness to break the law, the mere fact that government agents provide what appears to be a favorable opportunity is not entrapment. For example, it is not entrapment for a government agent to pretend to be someone else and to offer, either directly or through an informer or other decoy, to engage in an unlawful transaction.

If, then, you should find beyond a reasonable doubt from the evidence in the case that, before anything at all occurred respecting the alleged offense involved in this case, the defendant, _____, was ready and willing to commit a crime such as charged in the indictment, whenever opportunity was afforded, and that government officers or their agents did no more than offer the opportunity, then you should find that the defendant is not a victim of entrapment.

On the other hand, if the evidence in the case should leave you with a reasonable doubt whether the defendant, _____, had the previous intent or purpose to commit an offense of the character charged, apart from the inducement or persuasion of some officer or agent of the government, then it is your duty to find the defendant, _____, not guilty.

The defendant claims that he was insane at the time of the events alleged in the indictment. If you conclude that the government has proved beyond a reasonable doubt that the defendant committed the crime as charged, you must then consider whether the defendant should be found "not guilty only by reason of insanity."

The defendant was insane as the law defines that term only if, as a result of a severe mental disease or defect, the defendant was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

On the issue of insanity, it is the defendant who must prove his insanity by clear and convincing evidence. You should render a verdict of "not guilty only by reason of insanity" if you are persuaded by clear and convincing evidence that the defendant was insane when the crime was committed.

Remember, then, that there are three possible verdicts in this case: guilty, not guilty, and not guilty only by reason of insanity.

Evidence has been introduced tending to establish an alibi — that the defendant was not present at the time when, or at the place where, the defendant is alleged to have committed the offense charged in the indictment.

It is, of course, the government's burden to establish beyond a reasonable doubt each of the essential elements of the offense, including the involvement of the defendant; and if, after consideration of all the evidence in the case, you have a reasonable doubt as to whether the defendant was present at the time and/or place as alleged in the indictment, you must acquit the defendant.

Although intoxication or drunkenness alone will never provide a legal excuse for the commission of a crime, the fact that a person may have been intoxicated at the time of the commission of a crime may negate the existence of a specific intent.

So evidence that a defendant acted or failed to act while in a state of intoxication is to be considered in determining whether or not the defendant acted, or failed to act, with specific intent, as charged.

If the evidence in the case leaves you with a reasonable doubt whether, because of the degree of a defendant's intoxication, the mind of the accused was capable of forming, or did form, specific intent to commit the crime charged, you should acquit the accused of that crime.

Always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

If the defendant was not the aggressor, and had reasonable grounds to believe and actually did believe that the defendant was in imminent danger of death or serious bodily harm that the defendant could avoid only by using deadly force against the assailant, the defendant had the right to employ deadly force in defense. "Deadly force" means force which is likely to cause death or serious bodily harm.

In order for the defendant to have been justified in the use of deadly force in self-defense, the defendant must not have provoked the assault on the defendant or have been the aggressor. Mere words, without more, do not constitute provocation or aggression.

The circumstances under which the defendant acted must have been such as to produce in the mind of a reasonable prudent person, similarly situated, the reasonable belief that the other person was then about to kill the first person or to do that person serious bodily harm. In addition, the defendant must have actually believed that the defendant was in imminent danger of death or serious bodily harm and that deadly force must be used to repel it.

If evidence of self-defense is present, the Government must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the Government has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty. In other words, if you have a reasonable doubt whether or not the defendant acted in self-defense, your verdict must be not guilty.

If the defendant had reasonable grounds to believe and actually did believe that the defendant was in imminent danger of death or serious bodily harm and that deadly force was necessary to repel

such danger, the defendant would be justified in using deadly force in self-defense, even though it may afterwards have turned out that appearances were false. If these requirements are met, the defendant could use deadly force even though there was in fact neither purpose on the part of the other person to kill the defendant or do the defendant serious bodily harm, nor imminent danger that it would be done, nor actual necessity that deadly force would be used in self-defense.

If the defendant was justified in using deadly force in self-defense, the defendant was not required to retreat or to consider whether the defendant could safely retreat. The defendant was entitled to stand the defendant's ground and use such force as was reasonably necessary under the circumstances to protect from serious bodily harm.

However, if the defendant could have safely retreated but did not do so, the defendant's failure to retreat is a circumstance which you may consider, together with all other circumstances, in determining whether the defendant went farther in repelling the danger, real or apparent, than the defendant was justified in doing under the circumstances.

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term “evidence” includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the evidence in the case.

You may also consider either direct or circumstantial evidence. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating either the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It requires only that you weigh all of the evidence and be convinced of a defendant's guilt beyond a reasonable doubt before that defendant can be convicted.

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to the witness' testimony. In weighing the testimony of a witness you should consider the witness' relationship to the government or the defendant; interest, if any, in the outcome of the case; manner of testifying; opportunity to observe or acquire knowledge concerning the facts about which the witness testified; candor, fairness and intelligence; and the extent to which the witness has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

A witness may be discredited or “impeached” by contradictory evidence, by a showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness’ present testimony.

If you believe that any witness has so been impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

A witness may be discredited or “impeached” by contradictory evidence, by a showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness’ present testimony.

If you believe that any witness has so been impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

The fact that a witness has previously been convicted of a felony, or a crime involving dishonesty or false statement, is also a factor you may consider in weighing the credibility of that witness. The fact of such a conviction does not necessarily destroy the witness’ credibility, but is one of the circumstances you may take into account in determining the weight to be given to the witness’ testimony.

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If you believe that any witness has so been impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

If a defendant testifies, the defendant’s testimony should be weighed and considered, and the defendant’s credibility determined, in the same way as that of any other witness.

A witness may be discredited or “impeached” by contradictory evidence, by a showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness’ present testimony.

If you believe that any witness has so been impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

A defendant has a right not to testify. If a defendant does testify, however, the defendant’s testimony should be weighed and considered, and the defendant’s credibility determined, in the same way as that of any other witness. Evidence of a defendant’s previous conviction of a crime is to be considered by you only insofar as it may affect the credibility of the defendant as a witness, and must never be considered as evidence of guilt of the crime for which the defendant is on trial.

The fact that a witness has previously been convicted of a felony, or a crime involving dishonesty or false statement, is also a factor you may consider in weighing the credibility of that witness. The fact of such a conviction does not necessarily destroy the witness' credibility, but is one of the circumstances you may take into account in determining the weight to be given to the witness' testimony.

As stated before, a defendant has a right not to testify. If a defendant does testify, however, the defendant's testimony should be weighed and considered, and the defendant's credibility determined, in the same way as that of any other witness.

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As stated before, a defendant has a right not to testify. If a defendant does testify, however, the defendant's testimony should be weighed and considered, and the defendant's credibility determined, in the same way as that of any other witness. Evidence of a defendant's previous conviction of a crime is to be considered by you only insofar as it may affect the credibility of the defendant as a witness, and must never be considered as evidence of guilt of the crime for which the defendant is on trial.

A witness may also be discredited or impeached by evidence that the general reputation of the witness for truth and veracity is bad in the community where the witness now resides, or has recently resided. If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

The fact that a witness has previously been convicted of a felony, or a crime involving dishonesty or false statement, is a factor you may consider in weighing the credibility of that witness. The fact of such a conviction does not necessarily destroy the witness' credibility, but is one of the circumstances you may take into account in determining the weight to be given to the witness' testimony.

A witness may also be discredited or impeached by evidence that the general reputation of the witness for truth and veracity is bad in the community where the witness now resides, or has recently resided. If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified by knowledge, skill, experience, training, or education, may testify and state opinions concerning such matters.

You should consider each opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of a witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

The testimony of an alleged accomplice, and the testimony of one who provides evidence against a defendant as an informer or for pay or for immunity from punishment or for personal advantage or vindication, must always be examined and weighed by the jury with greater care and caution than the testimony of ordinary witnesses. You, the jury, must decide whether the witness' testimony has been affected by any of those circumstances, or by an interest in the outcome of the case, or by prejudice against the defendant, or by the benefits that the witness has received either financially, or as a result of being immunized from prosecution; and, if you determine that the testimony of such a witness was affected by any one or more of those factors, you should keep in mind that such testimony is always to be received with caution and weighed with great care.

You should never convict any defendant upon the unsupported testimony of such a witness unless you believe that testimony beyond a reasonable doubt.

In this case the government called as one of its witnesses an alleged accomplice, named as a co-defendant in the indictment, with whom the government has entered into a plea agreement resulting in exposure to a lesser sentence than that person would otherwise have been exposed to. Such plea bargaining, as its called, is lawful and proper, and is expressly provided for in the rules of this court.

An alleged accomplice, including one who has entered into a plea agreement with the government, does not thereby become incompetent as a witness. On the contrary, the testimony of such a witness may alone be of sufficient weight to sustain a verdict of guilty. However, you should keep in mind that such testimony is always to be received with caution and weighed with great care. You should never convict a defendant upon the unsupported testimony of an alleged accomplice unless you believe that testimony beyond a reasonable doubt; and the fact that an accomplice has entered a plea of guilty to the offense charged is not evidence, in and of itself, of the guilt of any other person.

The testimony of someone who is shown to have used addictive drugs during the period of time about which the witness testified must always be examined and weighed by you with greater care and caution than the testimony of ordinary witnesses.

You should never convict any defendant upon unsupported testimony of such a witness unless you believe that testimony beyond a reasonable doubt.

Where a defendant has offered evidence of good general reputation for truth and veracity, or honesty and integrity, or as a law-abiding citizen, you should consider such evidence along with all the other evidence in the case.

Evidence of a defendant's reputation, inconsistent with those traits of character ordinarily involved in the commission of the crime charged, may give rise to a reasonable doubt, since you may think it improbable that a person of good character in respect to those traits would commit such a crime.

You will always bear in mind, however, that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

In determining whether any statement, claimed to have been made by a defendant outside of the court and after an alleged crime has been committed, was knowingly and voluntarily made, you should consider the evidence concerning such a statement with caution and great care, and should give such weight to the statement as you feel it deserves under all the circumstances.

You may consider in that regard such factors as the age, sex, training, education, occupation, and physical and mental condition of the defendant, the defendant's treatment while under interrogation, and all the other circumstances in evidence surrounding the making of the statement.

In determining whether any statement, claimed to have been made by a defendant outside of the court and after an alleged crime has been committed, was knowingly and voluntarily made, you should consider the evidence concerning such a statement with caution and great care, and should give such weight to the statement as you feel it deserves under all the circumstances.

You may consider in that regard such factors as the age, sex, training, education, occupation, and physical and mental condition of the defendant, the defendant's treatment while under interrogation, and all the other circumstances in evidence surrounding the making of the statement.

Of course, any such statement should not be considered in any way whatever as evidence with respect to any other defendant on trial.

In any criminal case the Government must prove not only the essential elements of the offense or offenses charged, as defined in these instructions, but must also prove, of course, the identity of the defendant as the perpetrator of the alleged offense or offenses.

In evaluating the identification testimony of a witness you should consider all of the factors mentioned concerning your assessment of the credibility of any witness in general, and should also consider, in particular, whether the witness had an adequate opportunity to observe the person in question at the time or times about which the witness testified. You may consider, in that regard, such matters as the length of time the witness had to observe the person in question, the prevailing conditions at that time in terms of visibility or distance and the like, and whether the witness had known or observed the person at earlier times.

You may also consider the circumstances surrounding the identification itself including, for example, the manner in which the defendant was presented to the witness for identification, and the length of time that elapsed between the incident in question and the next opportunity the witness had to observe the defendant.

If, after examining all of the testimony and evidence in the case, you have a reasonable doubt as to the identity of the defendant as the perpetrator of the offense charged, you must find the defendant not guilty.

During this trial, you have heard evidence of acts of the defendant which may be similar to those charged in the indictment, but which were committed on other occasions. You must not consider any of this evidence in deciding if the defendant committed the acts charged in the indictment. However, you may consider this evidence for other, very limited, purposes.

If you find beyond a reasonable doubt from other evidence in this case that the defendant did commit the acts charged in the indictment, then you may consider evidence of the similar acts allegedly committed on other occasions to determine:

whether the defendant had the state of mind or intent necessary to commit the crime charged in the indictment; or

whether the defendant had a motive or the opportunity to commit the acts charged in the indictment; or

whether the defendant acted according to a plan or in preparation for commission of a crime; or

whether the defendant committed the acts for which he is on trial by accident or mistake.

These are the limited purposes for which any evidence of other similar acts may be considered.

I caution you, members of the jury, that you are here to determine the guilt or innocence of the defendant from the evidence in this case. The defendant is not on trial for any act or conduct or offense not alleged in the indictment. Neither are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

Also, the punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the judge, and should never be considered by you in any way, in arriving at an impartial verdict as to the guilt or innocence of the defendant.

A separate crime or offense is charged in each count of the indictment. Each charge and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

I caution you, members of the jury, that you are here to determine the guilt or innocence of the defendant from the evidence in this case. The defendant is not on trial for any act or conduct or offense not alleged in the indictment. Neither are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

Also, the punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the judge, and should never be considered by you in any way, in arriving at an impartial verdict as to the guilt or innocence of the defendant.

The case of each defendant and the evidence pertaining to that defendant should be considered separately and individually. The fact that you may find one of the defendants guilty or not guilty should not control your verdict as to any other defendant.

I caution you, members of the jury, that you are here to determine the guilt or innocence of the defendants from the evidence in this case. The defendants are not on trial for any act or conduct or offense not alleged in the indictment. Neither are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

Also, the punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the judge, and should never be considered by you in any way, in arriving at an impartial verdict as to the guilt or innocence of any defendant.

A separate crime or offense is charged against each of the defendants in each count of the indictment. Each offense, and the evidence pertaining to it, should be considered separately. Also, the case of each defendant should be considered separately and individually. You should analyze what the evidence in the case shows with respect to each defendant leaving out of consideration entirely any evidence admitted solely against the other defendants. The fact that you may find one defendant guilty or not guilty of an offense charged should not control your verdict as to any other offense or any other defendant.

I caution you, members of the jury, that you are here to determine the guilt or innocence of the defendants from the evidence in this case. The defendants are not on trial for any act or conduct or offense not alleged in the indictment. Neither are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

Also, the punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the judge, and should never be considered by you in any way, in arriving at an impartial verdict as to the guilt or innocence of any defendant.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another, and to deliberate in an effort to reach agreement if you can do so without giving up your individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges — judges of the facts. Your sole interest is to seek the truth from the evidence in the case and decide whether the government has proved the defendant guilty beyond a reasonable doubt.

Upon retiring to the jury room you should first elect a foreperson who will preside over your deliberations and will be your spokesperson in court.

A form of verdict has been prepared for your convenience. You will take the verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign it and then return to the courtroom.

If, during your deliberations, you should desire to communicate with me, please put your message or question in writing signed by the foreperson, and pass the note to the court security officer who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom. I caution you, however, with regard to any message or question you might send, that you should never state your numerical division.

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UNITED STATES DISTRICT JUDGE

Upon retiring to the jury room you should first elect your foreperson who will preside over your deliberations and will be your spokesperson in court.

Forms of verdict have been prepared for your convenience. You will take the verdict forms to the jury room and when you have reached unanimous agreement as to your verdicts, you will have your foreperson fill in, date and sign them and then return to the courtroom.

If, during your deliberations, you should desire to communicate with me, please put your message or question in writing signed by the foreperson, and pass the note to the court security officer who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom. I caution you, however, with regard to any message or question you might send, that you should never state your numerical division.

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UNITED STATES DISTRICT JUDGE