

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. [Number] WJ

[Defendant],

Defendant[s].

[JUDGE WILLIAM P. JOHNSON'S STOCK CRIMINAL]
JURY INSTRUCTIONS

INSTRUCTION NO. __

[Introduction to Final Instructions]

MEMBERS OF THE JURY:

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 decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give you some general instructions which apply in every case, for example, instructions about burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case, and finally I will explain to you the procedures you should follow in your deliberations. These instructions will be given to you for use in the jury room, so you need not take notes.

After these instructions on the law governing the case, the attorneys may make closing arguments. This allows the attorneys an opportunity to point out those things that are most significant or most helpful to their side of the case, and in doing so to call your attention to certain facts or inferences that might otherwise escape your notice.

5th Cir. Pattern No. 1.03 (and 1.01 - closing arguments in last paragraph)

INSTRUCTION NO. __

[Duty to Follow Instructions] - MULTIPLE DEFTS

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.

5th Cir. Pattern No. 1.04 (for **multiple defendants** on trial)

INSTRUCTION NO. __

The defendant is on trial before you upon an indictment brought by the Grand Jury charging as follows:

COUNT I

INSTRUCTION NO. ____

Presumption of Innocence, Burden of Proof, Reasonable Doubt

The indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all [**and no inference whatever may be drawn from the election of a defendant not to testify**]. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant.

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 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 you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

5th Cir. § 1.05

Delete bracketed material if defendant testifies.

INSTRUCTION NO. ____

[Controlled Substances - Conspiracy]

Title 21, United States Code, Section 846, makes it a crime for anyone to conspire with someone else to commit a violation of certain controlled substances 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, directly or indirectly, reached an agreement to _____;

Second: That the defendant knew of the unlawful purpose of the agreement;

Third: That the defendant joined in the agreement willfully, that is, with the intent to further its unlawful purpose;

Fourth: That the overall scope of the conspiracy involved at least _____; and

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

Interdependence is present when each alleged co-conspirator depends on the operation of each link in a chain to achieve the common goal. In essence, a defendant’s actions must facilitate the

endeavors of the alleged co-conspirators or facilitate the venture as a whole.

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 him 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, nor 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 happens to act in a way which advances some purpose of a conspiracy, does not thereby become a conspirator.

5th Cir. No. 2.89 (Controlled Substances - conspiracy - § 846)

INSTRUCTION NO. __

[Controlled Substances - Possession w/Intent to Distribute]

Title 21, United States Code, Section 841(a), 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.

5th Cir. §2.87 (Controlled Substances - Possession with Intent to Distribute)

INSTRUCTION NO. ____

5th Cir § 2.20 (“ Conspiracy”) (modified to add element of “interdependence”)

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;

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; and

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 shared mutual benefit in working to accomplish their unlawful purpose. Interdependence is present when each alleged

co-conspirator depends on the operation of each link in a chain to achieve the common goal. In essence, a defendant's actions must facilitate the endeavors of the alleged co-conspirators or facilitate the venture as a whole.

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.

5th Cir § 2.20 ("Conspiracy") (modified to add element of "interdependence")

INSTRUCTION NO. __

[Aiding and Abetting (Agency)]

The guilt of a defendant in a criminal case may be established without proof that the defendant personally did every act constituting the offense alleged. The law recognizes that, ordinarily, anything a person can do for himself may also be accomplished by that person through direction of another person as his agent, or by acting in concert with, or under the direction of, another person or persons in a joint effort or enterprise.

So, 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 that 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.

Notice, however, that before the defendant may be held criminally responsible for the acts of others, it is necessary that the accused deliberately associate himself 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 any 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.

5th Cir. Pattern No. 2.06 (Aiding and Abetting)

INSTRUCTION NO. ____

Using/carrying a firearm during commission of a drug trafficking crime of violence, 18 U.S.C.

§ 924(c)(1)

Title 18, United States Code, Section 924(c)(1), makes it a crime for anyone to use or carry a firearm during and in relation to a drug trafficking crime [crime of violence] or to possess a firearm in furtherance of such a crime.

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

First: That the defendant committed the crime alleged in Count _____. I instruct you that _____ is a drug trafficking crime [crime of violence]; and

Second: That the defendant knowingly used [carried] a firearm during and in relation to [knowingly possessed a firearm in furtherance of] the defendant's alleged commission of the crime charged in Count _____.

To prove the defendant "used" a firearm in relation to a drug trafficking crime [crime of violence], the government must prove that the defendant actively employed the firearm in the commission of Count _____, such as a use that is intended to or brings about a change in the circumstances of the commission of Count _____. "Active employment" may include brandishing, displaying, referring to, bartering, striking with, firing, or attempting to fire the firearm. Use is more than mere possession of a firearm or having it available during the drug trafficking crime [crime of violence].

[To prove the defendant "carried" a firearm, the government must prove that the defendant carried the firearm in the ordinary meaning of the word "carry," such as by transporting a firearm on the person or

in a vehicle. The defendant's carrying of the firearm cannot be merely coincidental or unrelated to the drug trafficking crime [crime of violence].

[To prove the defendant possessed a firearm "in furtherance," the government must prove that the defendant possessed a firearm that furthers, advances, or helps forward the drug trafficking crime [crime of violence].

"In relation to" means that the firearm must have some purpose, role, or effect with respect to the drug trafficking crime [crime of violence].

5th Cir. § 2.48 - Using/carrying a firearm during commission of a drug trafficking crime of violence, 18 U.S.C. § 924(c)(1).

INSTRUCTION NO. __

[On or About]

You will note that the indictment charges that the offense was committed on or about a specified 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 stated in the indictment.

5th Cir. Pattern No. 1.18

INSTRUCTION NO. __

[“*Knowingly*”]

The word "knowingly," as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally, and not because of mistake or accident.

5th Cir. Pattern No. 1.37

INSTRUCTION NO. ____

§ 17.05 "Willfully"--Defined (Non-Tax Cases)

The term "willfully", as used in these instructions to describe the alleged state of mind of Defendant _____, means that [he] [she] knowingly [performed an act] [failed to act], deliberately and intentionally ["on purpose"] as contrasted with accidentally, carelessly, or unintentionally.

FROM - O'Malley, Grenig & Lee - § 17.05; see also § 1.38, 5th Cir. (noting historical definition to mean 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).

This instruction should only be given when the statute upon which the prosecution is based employs the word "wilfully" or when applicable decisional authority requires the finding of such a mental state by the jury. Even in those instances, every effort should be made to address the issue of required mental status in the "Essential Elements of the Offense Charged" instruction.

INSTRUCTION NO. __

[Possession - Defined]

Possession, as that term is used in this case, may be of two kinds: 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.

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 a reasonable doubt that the defendant had actual or constructive possession, either alone or jointly with others.

5th Cir. Pattern No. 1.31

INSTRUCTION NO. __

[“Manufacture” Defined]

The word “manufacture” means the production, preparation, propagation, compounding or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.

“Manufacture” Instruction

INSTRUCTION NO. __

[Consider Amount of Drugs in Determining Intent]

With respect to the question of whether or not the defendant intended to distribute any controlled substance, you are instructed that the quantity of the controlled substance allegedly possessed by the 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.

United States v. Ortiz, 445 F.2d 1100 (10th Cir. 1971);

United States v. Henry, 468 F.2d 892 (10th Cir. 1972)

INSTRUCTION NO. __

[Evidence – Excluding What is Not Evidence]

As I told you earlier, it is your duty to determine the facts. In doing so, you must consider only the evidence presented during the trial, including the sworn testimony of the witnesses and the exhibits. Remember that any statements, objections or arguments made by the lawyers are not evidence and are not binding upon you.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in this case. Except for the instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

5th Cir. Pattern No. 1.06 (modified)

INSTRUCTION NO. __

[Evidence - Inferences - Direct & Circumstantial]

While you should consider only the evidence, 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 that reason and common sense lead you to draw from the facts which have been established by the evidence.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

5th Cir. Pattern No. 1.07 Alt.B (modified)

INSTRUCTION NO. __

[Credibility of Witnesses]

I remind you that it is your job to decide whether the government has proved the guilt of the defendant beyond a reasonable doubt. In doing so, 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's testimony. An important part of your job will be making judgments about the testimony of the witnesses, [including the defendant], who testified in this case. You should decide whether you believe what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions: did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

I remind you that the defendant [s] [has/have] the right not to testify. When the defendant[s] [does/do] testify, however, the defendant[‘ s; s’] testimony should be weighed and the defendant[‘ s; s’] credibility evaluated in the same way as that of any other witness

[witness(es)]

Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say. In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side on that point.

5th Cir. Pattern Nos. 1.08 (modified)

INSTRUCTION NO. _____

[Impeachment by Prior Inconsistencies]

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness said or did something, or failed to say or do something, which is inconsistent with the testimony the witness gave at this trial.

Earlier statements of a witness were not admitted in evidence to prove that the contents of those statements are true. You may consider the earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

5th Cir. Crim. Pattern Jury Instructions 1.10 (1997).

INSTRUCTION NO. __

[Impeachment by Prior Conviction - Witness other than Deft]

You have been told that the defendant, _____ was found guilty of _____.

This conviction has been brought to your attention only because you may wish to consider it when you decide, as with any witness, how much of the defendant' s testimony you will believe in this trial. The fact that the defendant was previously found guilty of another crime does not mean that the defendant committed the crime for which the defendant is on trial, and you must not use this prior conviction as proof of the crime charged in this case.

5th Cir. Pattern No. 1.12

INSTRUCTION NO. __

[Expert Witness]

During the trial you heard the expert testimony of _____, who has expressed opinions concerning the _____. 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 as an expert by knowledge, skill, experience, training, or education, may testify and state an opinion concerning such matters.

Merely because an expert witness has expressed an opinion does not mean, however, that you must accept this opinion. You should judge such testimony like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the soundness of the reasons give for the opinion, and all other evidence in the case.

5th Cir. Pattern No. 1.17

INSTRUCTION NO. __

[Accomplice - Informer - Testimony]

The testimony of an alleged accomplice, and the testimony of one who provides evidence against a defendant as an informer 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' s testimony has been affected by any of those circumstances, or by the witness' s interest in the outcome of the case, or by the prejudice against the defendant, or by the benefits that the witness has received either financially or as a result of being immunized from prosecution. 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.

5th Cir. Pattern No. 1.14

INSTRUCTION NO. __

[Accomplice - Co-Defendant - Plea Agreement & Testimony]

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 providing for [the dismissal of some charges and] a lesser sentence than the _____ would otherwise be exposed to for the offense to which the co-defendant plead guilty. Such plea bargaining, as it is called, has been approved as 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, is not prohibited from testifying. On the contrary, the testimony of such a witness may alone be of sufficient weight to sustain a verdict of guilty. 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. 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.

INSTRUCTION NO. __

[Witness' Use of Addictive Drugs]

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 the jury with greater care and caution than the testimony of ordinary witnesses.

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

5th Cir. Pattern No. 1.16

INSTRUCTION NO. __

[Character Evidence]

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 a duty upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

5th Cir. No. 1.09

INSTRUCTION NO. __

[Confessions - Single & Multiple Defendants]

In determining whether any statement, claimed to have been made by a defendant outside of 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, training, education, occupation, and physical and mental condition of the defendant, his 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 whatsoever as evidence with respect to any other defendant on trial.]

5th Cir. No. 1.26; 1.27 *Italics* added if multiple defendants

INSTRUCTION NO. __

[Identification Testimony]

In any criminal case the government must prove not only the essential elements of the offense or offenses charged, as hereafter defined, 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 already 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.

5th Cir. No. 1.29

INSTRUCTION NO. _____

[Similar Acts]

You have heard evidence of acts of the defendant [if plural put “s”] 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 [if plural put “s”] 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 [if plural put “s”] 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 [if plural put “s”] had the state of mind or intent necessary to commit the crime charged in the indictment; or

whether the defendant [if plural put “s”] had a motive or the opportunity to commit the acts charged in the indictment; or

whether the defendant [if plural put “s”] acted according to a plan or in preparation for commission of a crime; or

whether the defendant [if plural put “s”] 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.

INSTRUCTION NO. __

[Consider Only Crime Charged; Caution - Don't Consider Punishment]

You are here to decide whether the government has proved beyond a reasonable doubt that the defendant is guilty of the crime charged in the indictment. The defendant is not on trial for any act, conduct or offense not alleged in the indictment. Neither are you concerned with the guilt of any other person or persons not on trial as a defendant in this case.

Also, in determining whether the government has proved beyond a reasonable doubt that the defendant is guilty of the crime charged in the indictment, you should not be concerned with punishment in any way. Should you find the defendant guilty, it will be my duty to decide what the punishment will be, and punishment should not enter your consideration or discussion.

5th Cir. Pattern Nos. 1.19 and 1.20 (modified)

INSTRUCTION NO. __

[Single & Multiple Defts; Single & Multiple Counts]

[Single Defendant-Multiple Counts . . .]

A separate crime is charged in each count of the indictment. Each count, 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 crimes charged should not control your verdict as to any other.

[Multiple Defendants-Single Counts . . .]

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.

[Multiple Defendant-Multiple Counts . . .]

A separate crime is charged against one or more of the defendants in each count of the indictment. Each count, and the evidence pertaining to it, should be considered separately. The case of each defendant should be considered separately and individually. The fact that you may find one or more of the accused guilty or not guilty of any of the crimes charged should not control your verdict as to any other crime or any other defendant. You must give separate consideration to the evidence as to each defendant.

INSTRUCTION NO. __

[Duty to Deliberate - Verdict Form]

To reach a verdict, whether it is guilty or not guilty, all of you must agree. In other words, your verdict must be unanimous. Your deliberations will be secret, and you will never have to explain your verdict to anyone.

It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges -- judges of the facts. Your sole duty is to decide whether the government has proved the defendant guilty beyond a reasonable doubt.

When you go to the jury room, the first thing that you should do is select one of your number as your foreperson, who will help to guide your deliberations and will speak for you here in the courtroom. In this case, a form of verdict has been prepared for your convenience.

You will take the Court's instructions and the verdict form [**or verdict “forms”**] to the jury room and when all of you have reached agreement on the [**question**] [**questions**] asked, your foreperson will write the unanimous answer of the jury in the space provided, either guilty or not guilty. At the conclusion of your deliberations, the foreperson must sign and date the verdict form [**“forms”**]

and notify the Court that you have reached your verdict.

If you need to communicate with me during your deliberations, the foreperson should write the message on the stationery provided to you in the jury room and pass the note to the court security officer, who will bring it to my attention. I will respond as promptly as possible, either in writing or by bringing you back into the court so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never reveal how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict.

Faithful performance by you of your duties is vital to the administration of justice.

DATED _____, 2004

WILLIAM P. JOHNSON
United States District Judge

5th Cir. § 1.24 (modified)

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CR. NO. [Number] WJ

[Defendant],

Defendant.

VERDICT

Count I

WE, THE JURY, find the defendant, [Defendant],

_____ of the charge of possession with intent
(not guilty or guilty)

to distribute less than 50 kilograms of marijuana, a Schedule I controlled substance,
as charged in Count I of the Indictment.

Count II

WE, THE JURY, find the defendant, [Defendant],

_____ of the charge of possession with intent
(not guilty or guilty)

to distribute less than 50 kilograms of marijuana, a Schedule I controlled substance,
as charged in Count II of the Indictment.

Dated this ____ day of _____, 2004.

FOREPERSON