

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Cr. No. _____

_____,

Defendant.

**STOCK JURY INSTRUCTIONS
FOR CRIMINAL TRIALS BEFORE
THE HONORABLE M. CHRISTINA ARMIJO**

Revised and Effective February 1, 2005

STOCK INSTRUCTION NO. CR.01

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.

These instructions will be given to you for use in the jury room, so you need not take notes.

STOCK INSTRUCTION NO. CR.02A (SINGLE DEFENDANT)

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.

STOCK INSTRUCTION NO. CR.02B (MULTIPLE DEFENDANTS)

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.

STOCK INSTRUCTION NO. CR.03A (ALL DEFENDANTS TESTIFY)

What I have just read are the charges brought by the Grand Jury in the Indictment.

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 find the Defendant not guilty.

While the Government's burden of proof is a strict or heavy burden, proof beyond a reasonable doubt does not mean proof beyond all possible doubt. A reasonable doubt is a real doubt, based upon reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives.

STOCK INSTRUCTION NO. CR.03B (ANY DEFENDANT DOES NOT TESTIFY)

What I have just read are the charges brought by the Grand Jury in the Indictment.

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 find the Defendant not guilty.

While the Government's burden of proof is a strict or heavy burden, proof beyond a reasonable doubt does not mean proof beyond all possible doubt. A reasonable doubt is a real doubt, based upon reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives.

STOCK INSTRUCTION NO. CR.04

You will note that the Indictment charges that an offense was committed “on or about” a certain date. The Government does not have to prove that a 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 in the Indictment.

STOCK INSTRUCTION NO. CR.05A (KNOWINGLY AND WILLFULLY)

You will note that the terms “knowingly” and “willfully” are used from time to time in these instructions.

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.

An act or failure to act is “willfully” done, if done voluntarily and purposely with the specific intent to do something the law forbids.

STOCK INSTRUCTION NO. CR.05B (KNOWINGLY)

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.

STOCK INSTRUCTION NO. CR.06

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.

STOCK INSTRUCTION NO. CR.07

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.

STOCK INSTRUCTION NO. CR.08

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, the exhibits admitted in the record, and all facts which may have been agreed to or stipulated.

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.

STOCK INSTRUCTION NO. CR.09

A stipulation is an agreement between both sides that certain facts are true. A stipulation means simply that the Plaintiff and the Defendant accept the truth of a particular proposition or fact. Since there is no disagreement, there is no need for evidence apart from the stipulation.

STOCK INSTRUCTION NO. CR.10

Certain charts and summaries have been shown to you to help explain the evidence in this case. Their only purpose is to help explain the evidence. These charts and summaries are not evidence or proof of any facts.

STOCK INSTRUCTION NO. CR.11

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.

STOCK INSTRUCTION NO. CR.12

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.

STOCK INSTRUCTION NO. CR.13A

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.

STOCK INSTRUCTION NO. CR.13B (WITNESS WITH FELONY CONVICTION)

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.

STOCK INSTRUCTION NO. CR.13C (DEFENDANT TESTIFIES)

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.

STOCK INSTRUCTION NO. 13D (DEFENDANT TESTIFIES WITH FELONY CONVICTION)

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.

STOCK INSTRUCTION NO. CR.13E (WITNESS' REPUTATION FOR TRUTHFULNESS)

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.

STOCK INSTRUCTION NO. CR.14

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 as an expert by knowledge, skill, experience, training, or education, may testify and state opinions concerning such matters.

You should consider each expert 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 an expert 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.

STOCK INSTRUCTION NO. CR.15A (ACCOMPLICE OR INFORMER)

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.

STOCK INSTRUCTION NO. CR.15B (CO-DEFENDANT WITH PLEA AGREEMENT)

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.

STOCK INSTRUCTION NO. CR.16

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.

STOCK INSTRUCTION NO. CR.17

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.

STOCK INSTRUCTION NO. CR.18A (CONFESSION WITH SINGLE DEFENDANT)

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.

STOCK INSTRUCTION NO. CR.18B (CONFESSION WITH MULTIPLE DEFENDANTS)

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.

STOCK INSTRUCTION NO. CR.19

Exhibits ___ and ___ have been identified as typewritten transcripts [and partial translations from Spanish into English] of the oral conversations which can be heard on the tape recordings received in evidence as Exhibits ___ and ___. The transcripts also purport to identify the speakers engaged in such conversations.

I have admitted the transcripts for the limited and secondary purpose of aiding you in following the content of the conversations as you listen to the tape recordings [particularly those portions spoken in Spanish] and also to aid you in identifying the speakers.

You are specifically instructed that whether the transcripts correctly or incorrectly reflect the content of the conversations or the identities of the speakers is entirely for you to determine based upon your own evaluation of the testimony you have heard concerning the preparation of the transcripts, and from your own examination of the transcripts in relation to your hearing of the tape recordings themselves as the primary evidence of their own contents; and, if you should determine that the transcripts are in any respect incorrect or unreliable, you should disregard them to that extent.

STOCK INSTRUCTION NO. 20

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.

STOCK INSTRUCTION NO. CR.21

You have heard evidence of other [crimes] [acts] [wrongs] of the Defendant. You may consider that evidence only as it bears on:

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 a Defendant's other [crimes] [acts] [wrongs] may be considered. Of course, the fact that the Defendant may have previously committed an act similar to the one charged in this case does not mean that the Defendant necessarily committed the act charged in this case.

STOCK INSTRUCTION NO. CR.22A (SINGLE DEFENDANT, SINGLE COUNT)

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.

STOCK INSTRUCTION NO. CR.22B (SINGLE DEFENDANT, MULTIPLE COUNTS)

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.

STOCK INSTRUCTION NO. CR.22C (MULTIPLE DEFENDANTS, SINGLE COUNT)

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.

STOCK INSTRUCTION NO. CR.22D (MULTIPLE DEFENDANTS, MULTIPLE COUNTS)

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.

STOCK INSTRUCTION NO. CR.23

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.

STOCK INSTRUCTION NO. CR.24A (SINGLE VERDICT FORM)

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.

M. CHRISTINA ARMIJO
UNITED STATES DISTRICT JUDGE

STOCK INSTRUCTION NO. CR.24B (MULTIPLE VERDICT FORMS)

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.

M. CHRISTINA ARMIJO
UNITED STATES DISTRICT JUDGE