

Nothing said in these instructions or in the verdict form is to suggest in any manner what verdict I think you should find. It is your duty , as jurors, to determine the facts from all the evidence admitted in the case and to follow the law, as stated in these instructions, to determine whether the government has proved **a** defendant guilty beyond a reasonable doubt.

CHARGE

The defendant stands charged by an indictment, which I read to you during the jury selection process. I am not going to read it to you again, but instead will simply remind you that the defendant is charged in two counts, which may be summarized briefly as follows:

Count I charges the defendant with [REDACTED].

Count II charges the defendant with [REDACTED].

A copy of the indictment will be submitted to you with these instructions. I will later instruct you as to the elements of the crimes charged and the elements necessary to be proved. You are reminded that neither the indictment nor my summary of it constitutes proof against the defendant.

PLEA AND PRESUMPTION OF INNOCENCE,

To the indictment, the defendant has entered a plea of not guilty. This casts upon the government the burden of proving the essential allegations of the indictment beyond a reasonable doubt before you would be justified in returning a verdict of guilty.

The indictment is simply the means by which the defendant is placed upon trial and sets forth in a formal way the offenses of which he is accused. It is not evidence of the guilt of the defendant, and you should not allow yourselves to be influenced against him by reason of the filing of the indictment.

The defendant is presumed to be innocent of the crimes charged against him and of each and every element constituting such crimes. The presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

BURDEN OF PROOF - REASONABLE DOUBT

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

It is not required that the prosecution prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense – the kind of doubt with a basis that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A defendant is never to be convicted on mere suspicion or conjecture. So, if after careful and impartial consideration of all the evidence in the case you have a reasonable doubt that a defendant is guilty of an offense, you must find that defendant not guilty.

DATE OF ALLEGED OFFENSE

You will note that the indictment charges that the alleged offenses were committed “on or about” certain dates. The government does not have to establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense in question was committed on a date reasonably near the date alleged.

COUNTS ARE SEPARATE CRIMES

You are instructed that a separate crime or offense is charged in each count of the indictment. Each crime or offense charged and the evidence pertaining to it must be considered separately, and the guilt or innocence of the defendant as to each count or offense must likewise be considered separately.

The fact that you may find the defendant guilty or not guilty as to the crime or offense charged in one count must not control your verdict with reference to the other count or offense.

**SEPARATE CONSIDERATION OF MULTIPLE DEFENDANTS
AND MULTIPLE COUNTS**

You are instructed that a separate crime is charged against one or more of the defendants in each count of the indictment. Each offense charged and the evidence pertaining to it should be considered separately, and the guilt or innocence of a defendant as to each count or offense should likewise be considered separately.

The fact that you may find one defendant guilty or not guilty as to the crime charged in one count should not control your verdict with reference to any other offense charged against that defendant or against any other defendant. You must give separate and individual consideration to each charge against each defendant.

CONSIDER ONLY THE OFFENSE CHARGED

The defendant is not on trial for any act or conduct not specifically charged in the indictment.

ONLY DEFENDANTS ON TRIAL

You will note that, as to some of the counts or crimes charged, the government alleges that the defendants committed the offenses with other persons. Those other individuals are not on trial before you, and you will only be concerned with determining the guilt or innocence of the defendants now on trial.

EVIDENCE

The evidence in the case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, and all facts which have been admitted or stipulated. The arguments and statements of the attorneys are not evidence.

It is an attorney's duty to object when the other side offers testimony or other evidence that the attorney believes is not admissible. When I have sustained an objection to a question, you are to disregard the question, and may draw no inference from the wording of it or speculate as to what the witness would have said if permitted to answer. Upon allowing testimony or other evidence to be introduced over the objection of an attorney, I am not, unless expressly stated, indicating any opinion as to the weight or effect of such evidence. As stated before, you are the sole judges of the facts and that includes the credibility of all witnesses and the weight and effect of all evidence.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are, generally speaking, two types of evidence from which a jury may properly find the facts in a case - direct evidence and circumstantial evidence. "Direct evidence" is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances from which you may infer some other fact indicating either the guilt or innocence of a defendant. The law makes no distinction between the weight to be given to direct or circumstantial evidence, but simply requires that before convicting a defendant the jury be convinced of the defendant's guilt beyond a reasonable doubt. If, after weighing all of the evidence, you are not convinced of the guilt of a defendant beyond a reasonable doubt, you must find the defendant not guilty.

EXPERT WITNESS

During the trial you heard a witness/witnesses express an opinion concerning _____
_____. 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 an opinion concerning such matters.

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

**EVALUATION OF EVIDENCE AND
CREDIBILITY AND NUMBER OF WITNESSES**

In deciding the facts, you may have to decide which testimony to believe and which not to believe. You are the sole judges of the credibility or believability of each witness and the weight to be given to his or her testimony. In considering the testimony of any witness, you may take into account many factors, including the witness' relationship to the parties; the witness' interest, if any, in the result of the trial; the witness' manner of testifying; the witness' opportunity to observe or acquire knowledge concerning the facts about which he or she has testified; any bias or prejudice the witness may have; the witness' candor, fairness, and intelligence; and the extent to which the witness' testimony 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.

Your decisions on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side. The test is which witnesses and which evidence appeal to your minds as being most accurate and otherwise trustworthy.

IMPEACHMENT

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has made statements that are inconsistent with the witness' present testimony. If you believe that any witness has been impeached and thus discredited, you may give the testimony of that witness such weight, if any, as you think it deserves.

If any witness is shown knowingly to have testified falsely concerning any material matter, you have the right to distrust such witness' other testimony, and you may reject all the testimony of that witness, or give it such weight as you think it deserves

The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony, a crime punishable by imprisonment for more than a year. Prior conviction does not render a witness incompetent to testify, but is merely a factor that you may consider in determining the credibility of the witness. It is the province of the jury to determine the weight to be given to any prior conviction as impeachment and the weight to be given to the testimony of anyone who has previously been convicted of a felony.

You are instructed that a defendant who wishes to testify is a competent witness. The defendant's testimony should be evaluated by you in the same way as that of other witnesses. Evidence of a defendant's previous felony conviction 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 a crime for which the defendant is on trial.

DEFENDANT'S SILENCE

The Constitution of the United States grants a defendant the right to remain silent. No presumption of guilt may be raised and no inference of any kind may be drawn, by any juror, from the fact that a defendant does not take the witness stand and testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or of producing any evidence. 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.

PUNISHMENT

If a defendant is found guilty, it will be my duty to decide what the punishment will be, based on the applicable law and sentencing guidelines. You should not be concerned with punishment in any way and should not consider it in arriving at your verdict.

CLOSING ARGUMENTS

You will now hear the arguments of counsel. You are reminded that the attorneys' statements and arguments are not evidence. What they have said in their opening statements and during the trial, and what they will say in their closing arguments is intended to help you interpret the evidence, but it is not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

CLOSING

In a few moments, you will go with the bailiff to the jury room to begin your deliberations. If any of you have cell-phones or similar devices with you, you are instructed to be sure they are turned off and then to turn them over to the bailiff as you enter the jury deliberation room. They will be held by the bailiff for you and returned to you after your deliberations are completed and during any lunch break or similar period when you are not deliberating. The purpose of this requirement is to avoid any interruption or distraction during your deliberations and to avoid any question of outside contact with the jury during your deliberations.

When you retire you should elect one juror as your foreperson. That person will preside over your deliberations and speak for you with the Court. You will then discuss the case with your fellow jurors to reach an agreement if you can do so.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors. You must not use any method of chance in arriving at your verdict.

The bulk of the exhibits will be provided to you in the jury room for your review. Certain tangible physical objects, such as the drugs, weapons, cash and the like will not be furnished, but if you need to see those exhibits again during the course of your deliberations, please advise me by a note.

The verdict of the jury in this case must be unanimous, which means that each juror must agree and concur in the verdict. Do not be afraid to change your opinion if the discussion persuades you that you should. Do not, however, come to a decision simply because other jurors think it is right or for the mere purpose of returning a verdict.

A form of verdict will be sent to the jury room with you, along with these written instructions of the Court. When you have reached a verdict, the foreperson will sign and date it. Notify the bailiff by a written note to the Court when you have arrived at a verdict, so that you may return it into open court, where I will read the verdict. You are advised that the verdict form includes a blank space after the words “guilty” and “not guilty” for each of the counts charged against the defendant. If you find the defendant guilty or not guilty, simply place a mark in the appropriate box.

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff signed by your foreperson. In the message do not tell me how you stand on your verdict. No member of the jury should ever attempt to communicate with me except by a signed writing. You will note from the oath about to be taken by the bailiff, that during the course of your deliberations, the bailiff, as well as other persons, is forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Signed this _____ day of _____, 20__.

JOE HEATON
UNITED STATES DISTRICT JUDGE