

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF  
DIVISION**

**UNITED STATES OF AMERICA**

**vs.**

§  
§  
§  
§

**Criminal No.**

§

**Charge of the Court**

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.

You, as jurors, are the judges of the facts. But in determining what actually happened, that is, in reaching your decision as to the facts, it is your sworn duty to follow all of the rules of law as I explain them to you.

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. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors, and they have the right to expect nothing less.

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. [Defendant Name] did not testify. You may not attach any significance to this fact or even discuss it in the course of your deliberations. 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 proven 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.

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, the exhibits, and any facts stipulated to by the parties. Remember that any statements, objections, or arguments made by the lawyers are not evidence. The function of the lawyers is to point out those things that are most significant or most helpful to their respective sides 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.

During the trial I sustained objections to certain questions and exhibits. You must disregard those questions and exhibits entirely. Do not speculate as to what the witness would have said if permitted to answer the question or as to the contents of an exhibit. Your verdict must be based solely on the legally admissible evidence and testimony.

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.

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 should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. "Circumstantial evidence" is proof of a chain of events and circumstances indicating that something is or is not a fact. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

I remind you that it is your job to decide whether the government has proven 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 the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You should decide whether you believe all or any part of 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.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of two different witnesses, may or may not cause you to discredit such testimony. In

weighing the effect of any discrepancy, you should consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood. If you find that any statement made by any witness on the stand is false, in whole or in part, you may disregard the particular part you find to be false or you may disregard the witness's entire testimony.

You have been told that certain witnesses have previously been convicted of other crimes. A conviction is a factor you may consider in deciding whether to believe that witness, but it does not necessarily destroy the witness's credibility. It has been brought to your attention only because you may wish to consider it when you decide whether you believe any or all of that witness's testimony.

During the trial you heard the testimony of certain witnesses who have expressed opinions concerning matters on which he or she has special knowledge and training. 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 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's education and experience, the soundness of the reasons given for the opinion, and all other evidence in the case.

In this case the government called as witnesses several accomplices, named as codefendants 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 codefendant would otherwise be exposed to for the offense to which the codefendant 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 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, however, 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 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 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 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.

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.

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 knew 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.

Certain exhibits have been identified as typewritten transcripts of oral conversations which can be heard on recordings received in evidence. The transcripts also purport to identify the speakers engaged in such conversation. I have admitted the transcripts for the limited and secondary purpose of aiding you in following the content of the conversation as you listen to the recording, and also to aid you in identifying the speakers. You are specifically instructed that whether a transcript correctly or incorrectly reflects the content of the conversation or the identity of the speakers is entirely for you to determine based upon your own evaluation of the testimony you have heard concerning the preparation of that transcript, and from your own examination of that transcript in relation to your hearing of the recording itself as the primary evidence of its own contents; and, if you should determine that any transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

Counts One and Two of the Indictment charge the defendant with violating Title 21, United States Code, § 846, which makes it a crime for anyone to conspire to distribute any controlled substance within the United States.

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

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

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 the crime charged in Count One of the Indictment, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

*First:* That two or more persons, directly or indirectly, reached an agreement to distribute the controlled substance, marijuana;

*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; and

*Fourth:* That the overall scope of the conspiracy involved at least one hundred kilograms of marijuana.

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

*First:* That two or more persons, directly or indirectly, reached an agreement to distribute the controlled substance, cocaine;

*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; and

*Fourth:* That the overall scope of the conspiracy involved at least five kilograms of cocaine.

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.

You will notice that both Counts One and Two allege that certain "Overt Acts" were committed in the carrying on of the conspiracies alleged. The Government is not required to prove any of those "Overt Acts" and may prove other acts not alleged in the Indictment.

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.

The defendant is accused in Count Three of the Indictment with the offense of Engaging in a Continuing Criminal Enterprise, in violation of Title 21, United States Code, §848. 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 violated the Controlled Substances Act as charged in at least three of the 27 subparagraphs of paragraph 3 of Count Three of the indictment;

*Second:* That such violations were part of a continuing series of violations of the Controlled Substances Act;

*Third:* That the defendant obtained substantial income or resources from the series of violations; and

*Fourth:* That the defendant undertook such violations in concert with five or

more other persons with respect to whom the defendant occupied a position of organizer, supervisor, or manager. The five other persons need not have acted at the same time or in concert with each other. You need not unanimously agree on the identity of any other persons acting in concert with the defendant so long as each of you finds that there were five or more such persons.

The term "continuing series of violations" means at least three violations of the Controlled Substances Act as charged in the 27 subparagraphs of paragraph 3 of Count Three of the indictment. These violations must be connected together as a series of related or ongoing activities as distinguished from isolated and disconnected acts. You must unanimously agree on which of these underlying violations has been proven. The Government is not required to prove each and every of the 27 violations alleged in the Indictment, but must prove at least three such violations.

The term "substantial income or resources" means income in money or property which is significant in size or amount as distinguished from some relatively insignificant, insubstantial, or trivial amount.

The term "organizer, supervisor, or manager" means that the defendant was more than a fellow worker and that the defendant either organized or directed the activities of five or more other persons, exercising some form of managerial authority over them. The defendant need not be the only organizer or supervisor, and the "five or more persons" may include persons who are indirectly subordinate to the defendant through an intermediary.

The Indictment alleges that the defendant, while engaging in and working in furtherance of the Continuing Criminal Enterprise, intentionally killed [NAME of VICTIM1] by shooting him with a firearm.

The Indictment alleges that the defendant, while engaging in and working in furtherance of the Continuing Criminal Enterprise, intentionally killed [NAME of VICTIM2] by shooting him with a firearm. The Indictment alleges that the defendant, while engaging in and working in furtherance of the Continuing Criminal Enterprise, counseled, commanded, induced, procured and caused the intentional killing of [NAME of VICTIM2].

The Indictment alleges that the defendant, while engaging in and working in furtherance of the Continuing Criminal Enterprise, intentionally killed [NAME of VICTIM3] by shooting him with a firearm. The Indictment alleges that the defendant, while engaging in and working in furtherance of the Continuing Criminal Enterprise, counseled, commanded, induced, procured and caused the intentional killing of [NAME of VICTIM3].

If you find the defendant guilty of Engaging in a Continuing Criminal Enterprise, the verdict form submitted to you will call upon you say whether or not you find beyond a reasonable doubt that the defendant engaged in any of the three killings as alleged in the Indictment.

Count 12 of the Indictment charges that defendant possessed with intent to distribute more than 5 kilograms of cocaine, in violation of Title 21, United States Code, §841(a)(1). That statute makes it a crime for anyone knowingly or intentionally to possess a controlled substance with intent to distribute it.

Cocaine 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 proven each of the following beyond a reasonable doubt:

*First:* That the defendant knowingly possessed a controlled substance;

*Second:* That the substance was in fact cocaine;

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

*Fourth:* That the quantity of the cocaine was at least five kilograms.

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. 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.

In Counts 4 through 11, 13, 14, 15, and 17 the defendant is charged with violating provisions of Title 18, United States Code, Section 924(c)(1), which makes it a crime for anyone to use or carry a firearm during and in relation to a drug-trafficking crime or to possess a firearm in furtherance of such a crime. The term "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive. The term "firearm" also includes the frame or receiver of any such weapon, or any firearm muffler or firearm silencer, or destructive device. Count 4 of the Indictment charges that the defendant violated the law by possessing a firearm in furtherance of drug-trafficking crimes. 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 either the crime alleged in Count 1 or the crime alleged in Count 3 of the Indictment. I instruct you that the crime alleged in Count 1--Conspiracy to Distribute Marijuana--and the crime alleged in Count 3--Continuing Criminal Enterprise--are each a drug-trafficking crime; and

*Second:* That the defendant knowingly possessed a firearm in furtherance of the defendant's alleged commission of the crime charged in Count 1 or the crime charged in Count 3.

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

Count 5 of the Indictment charges that the defendant violated the law by using or carrying a firearm, and brandishing that firearm, during and in relation to drug-trafficking crimes.

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 either the crime alleged in Count 1 or the crime alleged in Count 3 of the Indictment. I instruct you that the crime alleged in Count 1--Conspiracy to Distribute Marijuana--and the crime alleged in Count 3--Continuing Criminal Enterprise--are each a drug-trafficking crime; and

*Second:* That the defendant knowingly used or carried a firearm during and in relation to the defendant's alleged commission of the crime charged in Count 1 or the crime charged in Count 3; and

*Third:* That the defendant brandished the firearm while carrying or using the firearm.

Count 6 of the Indictment charges that the defendant violated the law by using or carrying a firearm, and discharged that firearm, during and in relation to drug-trafficking crimes.

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 either the crime alleged in Count 1 or the crime alleged in Count 3 of the Indictment. I instruct you that the crime alleged in Count 1--Conspiracy to Distribute Marijuana--and the crime alleged in Count 3--Continuing Criminal Enterprise--are each a drug-trafficking crime; and

*Second:* That the defendant knowingly used or carried a firearm during and in relation to the defendant's alleged commission of the crime charged in Count 1 or the crime charged in Count 3; and

*Third:* That the defendant discharged the firearm while carrying or using the firearm.

Count 7 of the Indictment charges that the defendant violated the law by using or carrying a firearm during and in relation to drug-trafficking crimes, discharged such firearm, and in the course of such violation caused the death of another person..

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 either the crime alleged in Count 1 or the crime alleged in Count 3 of the Indictment. I instruct you that the crime alleged in Count 1--Conspiracy to Distribute Marijuana--and the crime alleged in Count 3--Continuing Criminal Enterprise--are each a drug-trafficking crime; and

*Second:* That the defendant knowingly used or carried a firearm during and in relation to the defendant's alleged commission of the crime charged in Count 1 or the crime charged in Count 3; and

*Third:* That the defendant discharged the firearm while carrying or using the firearm; and

*Fourth:* That the defendant caused the death of a person through such use of the firearm; and

*Fifth:* That the killing of such person, if any, was a murder.

Count 8 of the Indictment charges that the defendant violated the law by possessing a firearm in furtherance of drug-trafficking crimes. 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 either the crime alleged in Count 2 or the crime alleged in Count 3 of the Indictment. I instruct you that the crime alleged in



Count 2--Conspiracy to Distribute Cocaine--and the crime alleged in Count 3--Continuing Criminal Enterprise--are each a drug-trafficking crime; and

*Second:* That the defendant knowingly possessed a firearm in furtherance of the defendant's alleged commission of the crime charged in Count 2 or the crime charged in Count 3.

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

Count 9 of the Indictment charges that the defendant violated the law by using or carrying a firearm, and brandishing that firearm, during and in relation to drug-trafficking crimes.

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 2 or the crime alleged in Count 3 of the Indictment. I instruct you that the crime alleged in Count 2--Conspiracy to Distribute Cocaine--and the crime alleged in Count 3--Continuing Criminal Enterprise--are each a drug-trafficking crime; and

*Second:* That the defendant knowingly used or carried a firearm during and in relation to the defendant's alleged commission of the crime charged in Count 2 or the crime charged in Count 3; and

*Third:* That the defendant brandished the firearm while carrying or using the firearm.

Count 10 of the Indictment charges that the defendant violated the law by using or carrying a firearm, and discharged that firearm, during and in relation to a drug-trafficking 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 2 or the crime alleged in Count 3 of the Indictment. I instruct you that the crime alleged in Count 2--Conspiracy to Distribute Cocaine--and the crime alleged in Count 3--Continuing Criminal Enterprise--are each a drug-trafficking crime; and

*Second:* That the defendant knowingly used or carried a firearm during and in relation to the defendant's alleged commission of the crimes charged in Count 2 or the crime charged in Count 3; and

*Third:* That the defendant discharged the firearm while carrying or using the firearm.

Count 11 of the Indictment charges that the defendant violated the law by using or carrying a firearm during and in relation to drug-trafficking crimes, discharged such firearm, and in the course of such violation caused the death of another person.

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 2 or the crime alleged in Count 3 of the Indictment. I instruct you that the crime alleged in Count 2--Conspiracy to Distribute Cocaine--and the crime alleged in Count 3--Continuing Criminal Enterprise--are each a drug-trafficking crime; and

*Second:* That the defendant knowingly used or carried a firearm during and in

relation to the defendant's alleged commission of the crime charged in Count 2 or the crime charged in Count 3; and

*Third:* That the defendant discharged the firearm while carrying or using the firearm; and

*Fourth:* That the defendant caused the death of a person through such use of the firearm; and

*Fifth:* That the killing of such person, if any, was a murder.

Count 13 of the Indictment charges that the defendant violated the law by possessing a firearm in furtherance of drug-trafficking crimes. 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 either the crime alleged in Count 2 or the crime alleged in Count 3 or the crime alleged in Count 12 of the Indictment. I instruct you that the crime alleged in Count 2--Conspiracy to Distribute Cocaine--and the crime alleged in Count 3--Continuing Criminal Enterprise--and the crime alleged in Count 12--Possession of more than 5 kilograms of Cocaine with Intent to Distribute--are each a drug-trafficking crime; and

*Second:* That the defendant knowingly possessed a firearm in furtherance of the defendant's alleged commission of the crime charged in Count 2 or the crime charged in Count 3 or the crime alleged in Count 12..

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

Count 14 of the Indictment charges that the defendant violated the law by using or carrying a firearm, and discharged that firearm, during and in relation to a drug-trafficking 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 2 or the crime alleged in Count 3 or the crime alleged in Count 12 of the Indictment. I instruct you that the crime alleged in Count 2--Conspiracy to Distribute Cocaine--and the crime alleged in Count 3--Continuing Criminal Enterprise--and the crime alleged in Count 12--Possession of more than 5 kilograms of cocaine with intent to distribute--are each a drug-trafficking crime; and

*Second:* That the defendant knowingly used or carried a firearm during and in relation to the defendant's alleged commission of the crimes charged in Count 2 or the crime charged in Count 3 or the crime charged in Count 12; and

*Third:* That the defendant discharged the firearm while carrying or using the firearm.

Count 15 of the Indictment charges that the defendant violated the law by using or carrying a firearm during and in relation to drug-trafficking crimes, discharged such firearm, and in the course of such violation caused the death of another person..

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 2 or the crime alleged in Count 3 or the crime alleged in Count 12 of the Indictment. I instruct

you that the crime alleged in Count 2--Conspiracy to Distribute Cocaine--and the crime alleged in Count 3--Continuing Criminal Enterprise--and the crime alleged in Count 12--Possession of more than 5 kilograms of cocaine with intent to distribute--are each a drug-trafficking crime; and

*Second:* That the defendant knowingly used or carried a firearm during and in relation to the defendant's alleged commission of the crimes charged in Count 2 or the crime charged in Count 3 or the crime charged in Count 12; and

*Third:* That the defendant discharged the firearm while carrying or using the firearm; and

*Fourth:* That the defendant caused the death of a person through such use of the firearm; and

*Fifth:* That the killing of such person, if any, was a murder.

The government in this case alleges that the defendant is responsible for the offenses charged in Counts 14 and 15 even though he may not have personally discharged a firearm. 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 him through the direction of another person as his or her 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 the defendant may be held criminally responsible for the acts of others it is necessary that he deliberately associate himself in some way with the crime charged and participate in it with the intent to bring about the crime charged.

Of course, mere presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish that the 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.

With respect to the charges in Counts 14 and 15, for you to find the defendant guilty of either of those crimes, you must be convinced that the government has proven each of the following beyond a reasonable doubt, as to the count under consideration:

*First:* That the offense alleged in the count under consideration 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.

Count 17 of the Indictment charges that the defendant violated the law by possessing a firearm in furtherance of drug-trafficking crimes. 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 either the crime alleged in Count 1 or the crime alleged in Count 2 or the crime alleged in Count 3 of the Indictment. I instruct you that the crime alleged in Count 1--Conspiracy to Distribute Marijuana--and the crime alleged in Count 2--Conspiracy to Distribute Cocaine and the crime alleged in Count 3--Continuing Criminal Enterprise--are each a drug-trafficking crime; and

*Second:* That the defendant knowingly possessed a firearm in furtherance of the defendant's alleged commission of the crime charged in Count 1 or the crime charged in Count 2 or the crime alleged in Count 3.

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

In connection with Counts 5, 6, 7, 9, 10, 11, 14 and 15, there are certain terms that have a common meaning.

To prove the defendant "used" a firearm in relation to a drug-trafficking crime the government must prove that the defendant actively employed the firearm in the commission of the drug-trafficking crime alleged in the count under consideration, such as a use that is intended to or brings about a change in the circumstances of the commission of the drug-trafficking crime. "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.

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.

To prove that the defendant "discharged" a firearm, the government must prove that the defendant fired the weapon.

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

In order to prove that a killing was a "murder," the Government must show that the killing was unlawful, premeditated, and committed "with malice aforethought". To kill "with malice aforethought" means either to kill another person deliberately and intentionally, or to act with callous and wanton disregard for human life. To find malice aforethought, you need not be convinced that the defendant hated the person killed or felt ill will toward the victim at the time.

In determining whether the killing was with malice aforethought, you may consider the use of a weapon or instrument and the manner in which death was caused.

A killing is "premeditated" when it is the result of planning or deliberation. The amount of time needed for premeditation of a killing depends on the person and the

circumstances. It must be long enough for the killer, after forming the intent to kill, to be fully conscious of that intent.

You should consider all the facts and circumstances preceding, surrounding, and following the killing which tend to shed light upon the condition of mind of the defendant, before and at the time of the killing. No fact, no matter how small, and no circumstance, no matter how trivial, which bears upon the questions of malice aforethought and premeditation should escape your careful consideration.

A conspirator is responsible for offenses committed by other conspirators if the conspirator was a member of the conspiracy when the offense was committed and if the offense was committed in furtherance of, or as a foreseeable consequence of, the conspiracy.

Therefore, if you have first found the defendant guilty of the conspiracy charged in Count One and if you find beyond a reasonable doubt that during the time the defendant was a member of that conspiracy, other conspirators committed the offenses in Counts 4, 5, 6 or 7 in furtherance of or as a foreseeable consequence of that conspiracy, then you may find the defendant guilty of Counts 4, 5, 6, or 7, even though the defendant may not have participated in any of the acts which constitute the offenses described in Counts 4, 5, 6, or 7.

In like manner, if you have first found the defendant guilty of the conspiracy charged in Count Two and if you find beyond a reasonable doubt that during the time the defendant was a member of that conspiracy, other conspirators committed the offenses in Counts 8, 9, 10, 11, 13, 14, or 15 in furtherance of or as a foreseeable consequence of that conspiracy, then you may find the defendant guilty of Counts 8, 9, 10, 11, 13, 14, or 15 even though the defendant may not have participated in any of the acts which constitute the offenses described in Counts 8, 9, 10, 11, 13, 14, or 15.

You will note that the indictment charges that the offenses were 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.

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, not because of mistake or accident.

The word "intentionally," as that term has been used from time to time in these instructions, means that the act was done deliberately and purposefully; that is, that the act was the product of a conscious objective rather than because of mistake or accident.

You are here to decide whether the government has proven beyond a reasonable doubt that the defendant is guilty of the crime charged. 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, except as you are otherwise instructed.

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.

If the defendant is found guilty, there may be a separate hearing concerning punishment.

In reaching your verdict as to the guilt or innocence of the defendant, you should not be concerned with punishment in any way. It should not enter your consideration or discussion.

To reach a verdict, whether it is guilty or not guilty, all of you must agree. Your verdict must be unanimous on each count of the indictment. Your deliberations will be secret. 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 of the facts. Your duty is to decide whether the government has proven 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 presiding juror, who will help to guide your deliberations and will speak for you here in the courtroom.

A form of verdict has been prepared for your convenience. The presiding juror will write the unanimous answer of the jury in the space provided for each count of the indictment, either guilty or not guilty. At the conclusion of your deliberations, the presiding juror should date and sign the verdict.

You will notice that the Verdict Form calls upon you to make Special Findings with respect to Counts 1, 2, 3, and 12, if, and only if, you find the defendant guilty on those counts. With respect to those special findings, the government bears the burden of proof, beyond a reasonable doubt, on each finding. The fact that you may have found the defendant guilty on one or more of those four counts does not, in any manner, shift to the defendant any burden of proof or require that the defendant persuade you of any fact. The burden of proof, beyond a reasonable doubt, at all times remains on the government. If you have a reasonable doubt as to whether the defendant committed the acts set out in the Special Findings, you must find that he did not.

If you need to communicate with me during your deliberations, the presiding juror should write the message on one of the forms provided in the jury room and give it to the court security officer. I will either reply in writing or bring you back into the court to answer your message.

Bear in mind that you are never to reveal to any person, not even to the court, how the jury stands, numerically or otherwise, on any count of the indictment, until after you have reached a unanimous verdict.

SIGNED: [DATE]

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UNITED STATES DISTRICT JUDGE