

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	Crim. No. 07-549
	:	
vs.	:	
	:	
MAURICE PHILLIPS	:	

AGREED-UPON INSTRUCTIONS TO THE JURY PANELS

Attached are the preliminary instructions the Government and Maurice Phillips
request be delivered by the Court to the panels of jurors.

Respectfully submitted,

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Dated: Montclair, NJ
December 11, 2009

UNITED STATES

v.

**MAURICE PHILLIPS,
DAVID GARCIA and
SHERMAN KEMP**

PRELIMINARY INSTRUCTIONS

Ladies and gentlemen, I am Judge J. Curtis Joyner, and we are about to begin selecting a jury in this case. It is very important that I have your undivided attention for the next several minutes as I outline some of the things you need to know about this case and about your service on this case as a juror.

I want to begin by telling you something about the charges. In doing so, it is not my purpose to give you all the details. But what I do want to accomplish is to provide you with enough information about this case so that you are in a position to be able to make an honest, accurate and informed assessment about whether the nature of this case is such that you harbor any doubts about your ability to serve fairly and impartially.

In essence, all three defendants are charged with unlawfully agreeing to distribute cocaine through two organizations over a period of nine years, beginning in 1998 and continuing into 2007. The indictment refers to these alleged organizations as “The Phillips Cocaine Organization” and “The Alvear Cocaine Organization.” Mr. Garcia and Mr. Kemp are charged only with conspiracy to distribute cocaine. Maurice Phillips is also charged with being the leader of a cocaine organization, money laundering and murder, in that it is alleged that he hired his law enforcement, which resulted in the deaths of Ms. Glanville and Dane

King in Wyndmoor in Montgomery County on June 25, 2002. If he is found guilty of murder, the government will seek a sentence of death. David Garcia and Sherman Kemp are not charged with murder and they do not face the potential for a sentence of death.

These are obviously very serious matters, and it is important that you continue to give me your utmost attention as we begin this process. I also want to emphasize in the strongest possible way that each of the three defendants – Maurice Phillips, David Garcia and Sherman Kemp – has pleaded not guilty to the charges and each is presumed innocent of all charges. Fairness and justice require that you not reach any conclusions about guilt, one way or another, until you have heard all the evidence. Additionally, you should not take away from what I am about to tell you about the death penalty that Maurice Phillips is guilty of murder or that it is a certainty that, if selected for this jury, you will have to consider the death penalty. It is just that, as I am sure you understand, in any case where the death penalty is even a possible issue, we have to explore your attitudes about the death penalty since it is something a jury may have to consider.

Therefore, at the outset, I want to give you a brief overview of the law that governs the federal death penalty, so that when you are questioned you will have some background on the federal death penalty and what may be asked of you as a juror in this kind of case. These preliminary instructions are not a substitute for my actual instructions.

I want to begin by emphasizing several things about the federal death penalty. First, in the federal system, it is the jury which decides whether or not to impose a sentence of death. Second, the jury is never required to impose a death sentence. Third, the jury's

decision – whether it votes for life or death – is binding on me, the judge, which means I cannot change your decision. So, in the event Maurice Phillips is convicted of murder, and the jury decides not to impose the death penalty, I am required to impose a sentence of lifetime imprisonment. If the jury decides to sentence Maurice Phillips to death, I am bound by that decision as well. The fourth thing about the federal death penalty I wish to emphasize is that the alternative sentence to the death penalty is lifetime imprisonment without any possibility of release. There is no parole in the federal system and a person sentenced to life must spend the remainder of his or her life in prison. Thus, if Maurice Phillips is convicted of murder and not sentenced to death, he will spend the rest of his life in a federal prison.

In a case in which the Government seeks the death penalty, there are possibly two parts to the case. In the first part, the jury must decide whether the defendant is guilty or not guilty of murder and other charges. In the eyes of the law, and in the minds of the jurors, as I have told you, all three of the men on trial must be presumed to be not guilty of the charges they are facing unless and until the government proves otherwise. If the jury finds Maurice Phillips guilty of murder, the same jurors go on, at a second phase of the trial, to decide whether or not the death penalty should be imposed. Because the law never requires any member of a jury, even in a case of deliberate murder, to vote for the death penalty, the jury's decision on the appropriate punishment – life or death – is something which the law leaves up to individual jurors. There are no federal crimes where, if the person is found guilty of committing the crime, a sentence of death automatically follows.

Now if this case does proceed to the penalty phase, it will be very much like a second

trial. Only this time the issue is not guilt or innocence, but whether Maurice Phillips is sentenced to death or to life without possibility of release or parole. At this phase, there will be opening statements by the attorneys, there will be witnesses called and examined and cross-examined, there will be closing arguments, and there will be instructions from the Court. The jurors will then retire to deliberate and return a decision on whether or not the sentence will be death.

In the penalty phase of the trial, the Government must convince every individual member of the jury that death is the correct or appropriate sentence for the accused under the particular circumstances of the case. The decision whether or not to impose a death sentence in any case is, by law, left up to those who serve on the jury. In other words, each member of the jury must decide individually whether the accused is sentenced to death or life without possibility of release or parole. If a jury is unable to agree unanimously that the death penalty should be imposed, the law requires that I impose a life sentence. In other words, there is no hung-jury or retrial. A circumstance where the jury does not all agree on death results in a life sentence.

In going about this task, the jury must decide whether there are facts or circumstances about the crime or about the accused which are “aggravating.” Such factors, the government will argue, justify the imposition of the penalty of death. For any particular fact or circumstance to be weighed as an aggravating factor, the Government must prove it beyond a reasonable doubt and all twelve jurors must agree.

The law also requires you to take into consideration any facts or circumstances which

are mitigating. Such factors weigh in favor of life and, therefore, against the imposition of a death sentence. Mitigating factors can be particular facts about a defendant's character, background, mentality or conduct, or any relevant circumstance which might cause you to lean toward lifetime imprisonment as the appropriate punishment.

The burden of establishing the existence of any mitigating factor or factors is on the accused. However, the accused need only prove the existence of a mitigating factor by a preponderance of the evidence. This is a different legal standard that I will explain carefully to you later on if this case does proceed to a penalty trial, but essentially preponderance of the evidence means that the existence of a factor is more probably true than not true. Also, unlike the case of aggravating factors, all 12 jurors do not have to agree. A finding with respect to a mitigating factor may be made by any one or more members of the jury. So, if even a single member of the jury finds a mitigating factor, that individual member of the jury is allowed to weigh that factor in the process of deciding whether or not to vote for a sentence of death.

Once the process of deciding on the existence of aggravating and mitigating factors has been completed, each member of the jury is asked to balance the aggravating factors against mitigating factors and decide whether the aggravating factors outweigh the mitigating factors and, if so, whether they outweigh the mitigating factors sufficiently to justify a sentence of death; or, even if there have been no mitigating factors found, whether the aggravating factor or factors standing alone justify a sentence of death. Regardless of the findings with respect to aggravating and mitigating factors, no member of the jury is ever

required to vote for a sentence of death.

Next, some practical matters. In terms of timing, I cannot estimate with precision just how long the jury selection process or the trial itself will take. However, after conferring with counsel, it is our best estimate that the trial will last up to four months. To be on the safe side, service on this jury will require your commitment to be available from January 11th through the end of May, 2010.

Each of you has completed a questionnaire and are now here for individual questioning as we attempt to select a jury for this case. Once you have been questioned individually, you will find out whether you have been selected for the jury.

Once the trial starts, this case will be in session, generally speaking, four days a week, Monday through Thursday, from approximately 9:30 a.m. to 4:30 p.m. We observe all federal holidays. If you are selected for the jury you will, of course, have to be here every day the trial is in session. We will usually take a mid-morning break, a longer lunch break, and a mid-afternoon break. Depending on the status of testimony, we may occasionally work later in order to complete a witness' testimony. There are no plans to sequester the jury. That means you will be able to go about your business at the end of each trial day, and of course, you will have weekends and holidays off. If this case does proceed to a penalty stage, we may take some time off between the two phases.

This case has drawn very little attention from the media. Nonetheless, I am hereby ordering that, until you know whether or not you are going to be on the jury in this case, you do not read, listen to, or view anything about this case, whether it's by newspaper, radio,

television, or the internet. Do not google me; do not google the lawyers; do not google the case or the three defendants. Additionally, do not discuss this case with anyone, and that includes other prospective jurors here today, and if anyone approaches you to discuss the case you should report that to the Court. You may, of course, tell your employer and family members that you are involved in jury-selection, but you are ordered not to read or view anything about this case in any form of media or to discuss the particulars of the case with anyone.

As a final matter, I am going to introduce to you the participants in the trial. I will now request Government counsel to rise and introduce themselves and the others seated with them. Thank you. I will now request defense counsel to rise and introduce themselves and their respective client. Thank you.

[**To be given to the groups who did not see the witness lists** - Each of you has been provided a two-page list of potential witnesses in the case. Please review the list carefully and be prepared to tell us if there are any names on that list which are familiar to you.]

That completes my preliminary remarks, ladies and gentlemen. I will now ask you to follow our courtroom personnel who will take you to the location where you will await individual questioning. Thank you.

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