

**SAMPLE STANDARD CRIMINAL JURY INSTRUCTIONS**  
**(From a drug conspiracy/drug possession with intent case)**

**INTRODUCTION**

(1) Members of the jury, now it is time for me to instruct you about the law you must follow in deciding this case.

(2) I will start by explaining your duties and the general rules that apply in every criminal case.

(3) Then I will explain the elements of the crimes that the defendant is accused of committing. You may think of the "elements" of the crimes as the essential ingredients, or important parts, of the proof of the crimes.

(4) Then I will explain some rules that you must use in evaluating particular testimony and evidence.

(5) And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

(6) Please listen very carefully to everything I say.

**JURORS' DUTIES**

(1) You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing I have said or done during this trial was meant to influence your decision about the facts in any way.

(2) Your second job is to take the law that I give you, apply it to the facts, and decide if the government has proved the defendant guilty beyond a reasonable doubt. It is

my job to instruct you about the law, and you are bound by the oath you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with one or more of them. This includes the instructions that I gave you during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

(3) The lawyers may talk about the law during the trial. But if what they say is different from what I tell you, you must follow what I say. What the judge says about the law controls.

(4) Do your jobs fairly. Do not let any bias, sympathy or prejudice that you may feel for or against either side influence your decision in any way.

**PRESUMPTION OF INNOCENCE -- BURDEN OF PROOF --  
REASONABLE DOUBT**

(1) As you know, the defendant has pleaded not guilty to the crimes charged in the indictment. The indictment is not any evidence at all of guilt. It is just the formal way that the government tells the defendant what crimes he is accused of committing. It does not even raise any suspicion of guilt.

(2) Instead, the defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with the defendant unless the government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that the defendant is guilty.

(3) This means that no defendant has any obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the government to prove that he

is guilty, and this burden stays on the government from start to finish. You must find the defendant not guilty unless the evidence convinces you beyond a reasonable doubt that he is guilty.

(4) The government must prove every element, that is, -- every important part -- of the crimes charged “beyond a reasonable doubt.”

(5) A “reasonable” doubt is a fair, honest doubt growing out of the evidence or lack of evidence, and based on reason and common sense. Ultimately, a “reasonable doubt” would simply be a doubt that you find to be reasonable after you have carefully and thoughtfully examined and discussed the facts and circumstances present in this case.

(6) Proof “beyond a reasonable doubt” does not mean proof that amounts to absolute certainty, or beyond all possible doubt. It does not mean proof “beyond a shadow of doubt,” nor does it mean that the government must prove any fact or any crime with mathematical precision. Doubts that are merely imaginary, or that arise from nothing more than speculative possibilities, or that are based only on sympathy, prejudice or guessing are not “reasonable” doubts.

(7) In addition, the law does not require that every particular fact mentioned in the case be proved beyond a reasonable doubt. Rather, the law requires that enough facts be proved to convince you, beyond a reasonable doubt, that the crime was committed and that the defendant is guilty.

(8) If you are convinced that the government, through the evidence, has proved the defendant guilty beyond a reasonable doubt, then the proper verdict is “guilty.” If you are not convinced, a “not guilty” verdict must be returned.

## **EVIDENCE DEFINED**

(1) You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

(2) The evidence in this case includes only what the witnesses said while they were testifying under oath; the exhibits that I allowed into evidence; the stipulations that the lawyers agreed to; and any facts that I have told you to simply assume had been proven.

(3) Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. The indictment is not evidence. My legal rulings are not evidence. And my comments and questions are not evidence. Do not speculate about what some witness might have said or what some exhibit might have shown. Such things not in evidence are not evidence, and you are bound by your oath not to let them influence your decision in any way.

(4) Make your decision based only on the evidence, as I have defined it here, and nothing else.

## **CONSIDERATION OF EVIDENCE**

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

## **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

(1) Now, we have already discussed the terms "direct evidence" and "circumstantial evidence."

(2) Direct evidence is simply evidence like the testimony of any eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw someone walking across a field and you believed him, that would be direct evidence that such a thing had happened.

(3) Circumstantial evidence is simply a collection of circumstances that indirectly proves a fact. If a witness said that he saw fresh footprints in newly fallen snow, that would be circumstantial evidence from which you could conclude that someone had recently been walking there.

(4) Legally, there is no difference between direct and circumstantial evidence. The law does not say that one is necessarily any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

## **CREDIBILITY OF WITNESSES**

(1) Part of your job as jurors is to decide how believable each witness was. This is your job, not mine. It is up to you to decide if a witness' testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or you can believe none of it at all (even if the witness has not been contradicted). But you should, of course, act reasonably and carefully in making these decisions.

(2) Let me suggest some things for you to consider in evaluating each witness' testimony.

(A) Ask yourself if the witness was able to clearly see or hear the events.

Sometimes even an honest witness may not have been able to clearly see or hear what was happening, and may make a mistake.

(B) Ask yourself how good the witness' memory seemed to be. Did the witness seem able to accurately remember what happened?

(C) Ask yourself if there was anything else that may have interfered with the witnesses' ability to perceive or remember the events.

(D) Ask yourself how the witness looked and acted while testifying. Did the witness seem honestly to be trying to tell you what happened? Or did the witness seem to be evasive, confused or even lying?

(E) Ask yourself if the witness had any relationship to either side of the case, or anything to gain or lose that might influence the witness' testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant testimony in favor of one side or the other.

(F) Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did anything off the stand that is not consistent with what the witness said while testifying. If you think that the witness was inconsistent, ask yourself if this makes the witness' testimony less believable. Sometimes it may; other times it may not. For example, you might consider whether the inconsistency was understandable or explainable. You might also ask yourself if it seemed like an

insignificant or common mistake, or if it seemed to indicate a deliberate attempt to mislead.

(G) Finally, ask yourself how believable the witness' testimony was in light of all the other evidence. Was the witness' testimony supported or was it contradicted by other evidence that you found believable? If you think that a witness' testimony was contradicted by other evidence, keep in mind that people sometimes do forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

(3) These are only some of the things that you may consider in deciding how believable or reliable each witness was. You may also consider other things that you think shed light on the witness' believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight -- how much significance -- you think it deserves.

### **NUMBER OF WITNESSES**

(1) One more point about the witnesses. Sometimes jurors wonder if the number of witnesses who testified on a particular point, or on one side or the other, makes any difference. It does not.

(2) Do not make any decisions based only on the number of witnesses who testified. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves. Concentrate on that, not the numbers.

### **LAWYERS' OBJECTIONS**

(1) There is one more general subject that I want to talk to you about before I begin explaining the elements of the crimes charged.

(2) The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

(3) And do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case. Remember that your decision must be based only on the evidence that you saw and heard here in court.

### **ELEMENTS OF THE OFFENSE: INTRODUCTION**

(1) That concludes the part of my instructions explaining your duties and the general rules that apply in every criminal case. In a moment, I will explain the significant elements of the crimes that the defendant is accused of committing.

(2) But before I do that, I want to emphasize that the defendant is only on trial for the particular crimes charged in the indictment. Your job is limited to deciding whether the government has proved each crime charged.

Also keep in mind that whether anyone else should be prosecuted and convicted for this crime is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the government has proved the defendant guilty. Do not let the possible guilt of others influence your decision in any way.

### **COUNT 1: CONSPIRACY TO COMMIT AN OFFENSE—BASIC ELEMENTS**

(1) Count 1 of the indictment accuses the defendant and others of a conspiracy. Specifically, this is claimed to be a conspiracy to commit the crime of either "possessing with intent to distribute" or "distributing" **[drug]** in violation of federal law. It is a crime for

two or more persons to conspire, or agree, to commit a criminal act, even if they never actually achieve their goal.

(2) A conspiracy is a kind of criminal partnership. For you to find the defendant guilty of the conspiracy charge, the government must prove both of the following essential ingredients (or "elements") beyond a reasonable doubt:

(A) First, that two or more persons conspired, or agreed, to commit the crime of either "possessing with intent to distribute" or "distributing" [drug].

(B) Second, that the defendant knowingly and voluntarily joined the conspiracy intending to help advance or achieve its goal.

(3) You must be convinced that the government has proved both of these things beyond a reasonable doubt in order to find the defendant guilty of the conspiracy charge.

### **AGREEMENT**

(1) With regard to the first element--a criminal agreement-- the government must prove that two or more persons conspired, or agreed, to cooperate with each other to commit the crime of "possessing with intent to distribute" or "distributing" [drug].

(2) This does not require proof of any formal written or spoken agreement, or that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough. You can consider these things in deciding whether the government has proved a criminal agreement. But without more they are not enough.

(3) What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to

commit the crime of "possessing with intent to distribute" or "distributing" [drug]. This is essential.

(4) An agreement can be proved indirectly, by facts and circumstances which lead to a conclusion that an agreement existed. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

### **UNINDICTED OR UNNAMED CO-CONSPIRATORS**

(1) Now, some of the people who may have been involved in these events are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted, or on trial at the same time.

(2) Nor is there any requirement that the names of the other conspirators be known. An indictment can charge a defendant with a conspiracy involving people whose names are not known, as long as the government can prove that the defendant conspired with one or more of them. Whether they are named or not does not matter.

### **DEFENDANT'S CONNECTION TO THE CONSPIRACY**

(1) If you are convinced that there was a criminal agreement, then you must decide whether the government has proved that the defendant knowingly and voluntarily joined that agreement. To convict a defendant, the government must prove that he knew the conspiracy's main purpose and that he voluntarily joined it intending to help advance or achieve its goals.

(2) This does not require proof that the defendant knew everything about a conspiracy, or that he knew all the other members, or that he was a member from the very beginning. Nor does it require proof that the defendant played a major role in the

conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

(3) There is no requirement that a particular defendant be inter-connected with all the other co-conspirators or that he be specifically connected with some particular other co-conspirator. It is the conspiracy itself to which the defendant must be connected.

(4) But proof that the defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because the defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. You can consider these things in deciding whether the government has proved that the defendant joined a conspiracy. But without more they are not enough.

(5) What the government must prove is that the defendant knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals. This is essential.

(6) The defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew the conspiracy's main purpose. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

(7) In determining whether a defendant was a member of the conspiracy, you may consider all the evidence that you have heard, most particularly that evidence which deals with his own conduct and actions, together with his own statements and declarations.

(8) You may also consider the acts done and the statement or declarations made during the course of the conspiracy by other people who were themselves conspirators.

The acts and deeds of conspirators, in other words, may help you in deciding if this defendant was, or was not, a member of the conspiracy.

(9) In short, whether or not the defendant has been proven, beyond a reasonable doubt, to have been a member of the conspiracy may be determined by the jury based on reasonable conclusions drawn from all the evidence in the case.

### **"ACTUAL" AND "CONSTRUCTIVE" POSSESSION; JOINT POSSESSION**

(1) Next, I want to explain something about possession. The indictment charges that this was a conspiracy in part aimed at "possessing" [drug] with intent to distribute it. The law recognizes two kinds of possession—"actual" and "constructive." Either one of these would be enough to prove that an item was possessed.

(2) Actual possession exists when a person has direct, physical control over an item and knows he has such control.

(3) Constructive possession exists when a person has the right to exercise physical control over an item, knows that he has this right, and intends to exercise physical control over it at some time, either directly or through other persons.

(4) For example, if you left something with a friend while you went away, intending to take it back or send someone to get it for you when you returned, your friend would have "actual" possession of it and you would have "constructive" possession while you were gone.

(5) However, simply being present near where something is located does not equal possession.

(6) One more point about possession. Two or more people can together share actual or constructive possession over property. And if they do, both are considered to have

possession as far as the law is concerned. But, just being present near others who had possession is not enough to show that a person himself had possession.

### **DEFINITION OF "DISTRIBUTION"**

The term "distribute" means to transfer possession of a controlled substance from one person to the possession of another person. This definition includes actual transfer (handing the item over directly), "constructive" transfer (transferring possession indirectly, for example by using an intermediary), and attempted (uncompleted) transfer of possession. A person need not be paid for the substance in order to have "distributed" it. Selling is one way to "distribute;" bartering or trading is another way; giving is another. In other words, the particular *motive* for distribution is not important in deciding whether distribution was intended.

### **IMPOSSIBILITY OF SUCCESS**

(1) One last point about conspiracy. It is no defense to a conspiracy charge that success was impossible because of circumstances that the defendant did not know about. This means that you may find the defendant guilty of conspiracy even if it was impossible for them to successfully complete the crime that they agreed to commit.

### **COUNT 2: POSSESSION WITH INTENT TO DISTRIBUTE BASIC ELEMENTS**

(1) The indictment accuses the defendant with knowingly and intentionally possessing with intent to distribute a controlled substance, in violation of a federal law. For you to find the defendant guilty of this crime, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant possessed a substance.

- (B) Second, that the substance possessed was a "controlled substance" (an illegal drug) as described in the indictment.
- (C) Third, that the defendant knew it was an illegal drug.
- (D) Fourth, that the defendant intended to distribute it.

(2) [drug] is a "controlled substance" under federal law.

(3) As to this count, if you are convinced that the government has proved all of these elements, your verdict on this charge should be "guilty". If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

### **POSSESSION AND "CONSTRUCTIVE" POSSESSION**

I have already explained "actual" possession and "constructive" possession. Those instructions fully apply in this Count 2. Either one of these forms of possession if proved by the government, is enough to convict.

### **DEFINITION OF "DISTRIBUTION"**

I have already explained the term "distribute." That instruction fully applies in this Count 2.

### **ON OR ABOUT**

- (1) Next, I want to say a word about the date mentioned in the indictment.
- (2) The indictment charges that the crime happened "on or about" a certain date.

The government does not have to prove that the crime happened on that exact date. But the government must prove that the crime happened reasonably close to that date.

### **SEPARATE CONSIDERATION SINGLE DEFENDANT CHARGED WITH MULTIPLE CRIMES**

(1) The defendant has been charged with two crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

(2) Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any of the other charges.

### **INFERRING REQUIRED MENTAL STATE**

(1) Next, I want to explain something about proving a defendant's state of mind.

(2) Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

(3) But a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what he did, how he acted, and any of the facts or circumstances in evidence that show his state of mind.

(4) You may also consider the natural and probable results of acts that he knowingly did or did not do, and whether it is reasonable to conclude that he intended those results. This, of course, is all for you to decide.

### **TESTIMONY OF A WITNESS UNDER GRANT OF IMMUNITY OR REDUCED CRIMINAL LIABILITY**

(1) You have heard testimony from a witness who was promised that the government may ask for a reduction in sentence in exchange for a promise to provide

truthful testimony and information in this or other cases. It is permissible for the government to make such a promise. Still, you should treat the testimony of such a witness with more caution than the testimony of other witnesses. You should consider whether the testimony may have been influenced by the government's promise.

(2) If the witness's testimony is not supported by other evidence or testimony that you find reliable, you should not convict the defendant based on that witness's testimony unless you believe that testimony beyond a reasonable doubt.

### **DEFENDANT'S RIGHT TO NOT TESTIFY**

(1) The defendant has an absolute right not to testify. The fact that the defendant did not testify cannot be considered by you in any way or even discussed in your deliberations.

(2) I remind you that it is up to the government to prove the defendant guilty beyond a reasonable doubt. It is not up to the defendant to prove that he is innocent.

### ***[PAUSE FOR ARGUMENTS OF ATTORNEYS]***

### **JURY ROOM DELIBERATIONS: INTRODUCTION**

(1) Now let me explain some things about your deliberations in the jury room, and your possible verdicts.

(2) The first thing that you should do in the jury room is choose someone to be your foreperson. This person will help to guide your discussions, and will speak for you here in court.

(3) Once you start deliberating, do not talk to the jury officer or to me or to anyone else about the case. We must communicate in writing. Write down your message, sign it,

and then give it to the jury officer. He will give it to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me some time to get back to you. Your messages should normally be sent to me through your foreperson.

(4) If you want to see any of the exhibits that were admitted into evidence, you may send me a message, and those exhibits will be provided to you.

### **EXPERIMENTS, RESEARCH AND INVESTIGATION**

(1) Remember that you must make your decision based only on the evidence that you saw and heard here in court. This means that you must not try to gather any information about the case on your own while you are deliberating.

(2) For example, do not conduct any experiments inside or outside the jury room; do not bring any books, like a dictionary, or anything else with you to help you with your deliberations; do not conduct any independent research, reading or investigation about the case; and do not visit any of the places that were mentioned during the trial.

(3) Make your decision based only on the evidence that you saw and heard here in court.

### **UNANIMOUS VERDICT**

Your verdict, whether it is guilty or not guilty, must be unanimous. This means that to find the defendant guilty, every one of you must agree that the government has overcome the presumption of innocence with evidence that proves his guilt beyond a reasonable doubt. And to find the defendant not guilty, every one of you must agree that the government has failed to convince you beyond a reasonable doubt. Either way, your verdict must be unanimous.

## **DUTY TO DELIBERATE**

(1) Now that all the evidence and arguments are complete, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and you are wrong.

(2) But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that -- your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

(3) No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

(4) Listen carefully to what everyone else has to say, and then decide for yourself if the government has proved the defendant guilty beyond a reasonable doubt.

## **PUNISHMENT**

(1) If you decide that the government has proved the defendant guilty, then it will be my job to decide what the appropriate punishment should be.

(2) Deciding what the punishment should be is my job, not yours. It would violate your oaths as jurors to discuss or even to allow yourself to think about any possible punishment in deciding your verdict.

(3). Your job is to look at the evidence and decide if the government has proved the defendant guilty beyond a reasonable doubt.

### **VERDICT FORM**

(1) I have prepared a verdict form that you should use to record your verdict. The form reads as follows:

#### *JUDGE WILL READ VERDICT FORM*

(2) As to the indictment, if you decide that the government has proved the charge against the defendant beyond a reasonable doubt, say so by having your foreperson circle the word "guilty" on the form. If you decide that the government has not proved the charge against the defendant beyond a reasonable doubt, say so by having your foreperson circle the phrase "not guilty" on the form. Your foreperson should then sign the form, put the date on it, and send out a note saying only that you have reached a verdict. You can notify us by pressing the buzzer near the door, or simply by knocking on the door. Be patient and someone will answer your buzz or knock directly. When you are called into court to deliver the verdict bring the book containing the verdict forms with you. My courtroom deputy clerk will then read each verdict aloud.

### **VERDICT LIMITED TO CHARGES AGAINST A DEFENDANT**

(1) Remember that the defendant is on trial only for the particular crimes charged in the indictment. Your job is limited to deciding whether the government has proved the charge in the indictment.

(2) Also remember that whether anyone else should be prosecuted and convicted for these crimes or any other crime is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the government

has proved this particular defendant guilty. If it has, your vote should be "guilty." If it has not, you will vote "not guilty." Do not let the possible guilt of others influence your decision in any way.

### **COURT HAS NO OPINION**

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You decide for yourselves if the government has proved the defendant guilty beyond a reasonable doubt.