

Criminal Instructions

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Defendant.

CRIMINAL ACTION

Case No.

INSTRUCTIONS TO THE JURY

August 2023

INSTRUCTION NO.

INTRODUCTION

Members of the Jury:

The time has now come for me to explain to you the law that will govern your jury deliberations. In the interest of clarity, I will read the instructions to you, and each of you has a copy of the instructions to use in the jury room.

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what testimony and evidence is relevant under the law for your consideration. It is your duty, as judges of the facts, to follow and apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but you must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me. That is, 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 give it to you, regardless of the consequences.

INSTRUCTION NO.

INDICTMENT

The indictment in this case charges substantially as follows:

[insert relevant passages]

INSTRUCTION NO.

INDICTMENT—AN ACCUSATION

An indictment is simply a formal method of accusing a defendant of a crime. It is not evidence of any kind against a defendant, and does not create any presumption or permit any inference of guilt. It is a mere charge or accusation—nothing more and nothing less.

INSTRUCTION NO.

ON OR ABOUT

The indictment charges that the crime was committed “on or about” a certain date. It is not necessary that the proof establish with certainty the exact date of the alleged crime. It is sufficient if the evidence shows beyond a reasonable doubt that the crime was committed on a date reasonably near the date alleged.

INSTRUCTION NO.

MULTIPLE DEFENDANTS—MULTIPLE COUNTS

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 a defendant guilty or not guilty as to one of the crimes charged should not control your verdict as to any other crimes charged. Your verdict with respect to each count of the indictment must be unanimous.

Also, the case of each defendant should be considered separately and individually. The fact that you may find one or more of the defendants guilty or not guilty of any of the crimes charged should not control your verdict as to any other crime or any other defendant. You must give separate consideration to the evidence as to each defendant.

[If needed:] During this trial, evidence may be received against defendant **[A]** which is not admissible against defendant **[B]**. You may not consider this evidence when deliberating your verdict concerning defendant **[B]**.

INSTRUCTION NO.

NOT GUILTY PLEA

Defendant has entered pleas of “not guilty” to each of the charges contained in the indictment. These pleas put in issue every element of the crimes charged, and therefore it is the burden and responsibility of the government to prove beyond a reasonable doubt every element of the crimes charged.

INSTRUCTION NO.

PRESUMPTION OF INNOCENCE

The law presumes a defendant to be innocent of crime. This presumption remains with him throughout the trial. Thus, a defendant, although accused, begins the trial with a “clean slate,” with no evidence against him and the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against a defendant. The presumption of innocence alone is sufficient to acquit the defendant now on trial, unless the jurors are satisfied of the defendant’s guilt beyond a reasonable doubt, from all the evidence.

INSTRUCTION NO.

BURDEN OF PROOF — REASONABLE DOUBT

The burden is always upon the government to prove beyond a reasonable doubt every essential element of the crimes charged against a defendant. The law does not require defendant to prove his or her innocence in any way, or to produce any evidence at all. The government has the burden of proving defendant guilty beyond a reasonable doubt, and if it fails to do so, you must find defendant not guilty. In determining whether or not the government has met this burden, you must consider all the evidence.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning defendant's guilt. A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all evidence in the case.

If, based on your consideration of the evidence, you are firmly convinced that defendant is guilty of the crime or crimes charged, you must find him **[/her]** guilty. If, on the other hand, you think there is a real possibility that he **[/she]** is not guilty, you must give him **[/her]** the benefit of the doubt and find him **[/her]** not guilty.

INSTRUCTION NO.

CAUTION—CONSIDER ONLY CRIMES CHARGED

You are here to decide whether the government has proved beyond a reasonable doubt that **[each]** defendant is guilty of the crimes charged. Defendant is **[Defendants are]** not on trial for any act, conduct, or crime not charged in the indictment.

It is not up to you to decide whether anyone who is not on trial in this case should be prosecuted for the crime charged. The fact that another person also may be guilty is no defense to a criminal charge.

The question of the possible guilt of others should not enter your thinking as you decide whether a defendant has been proved guilty of the crimes charged.

[Elements of the Offense(s) Instructions]

INSTRUCTION NO.
EVIDENCE—DEFINED

You must make your decision based only on the evidence that you will see and hear 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.

The evidence in this case will include only what the witnesses will say while they are testifying under oath, the exhibits that I allow into evidence, the stipulations that the lawyers agree to, and any facts that I may judicially notice.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

During the trial, I may not let you hear the answers to some of the questions that the lawyers ask. I may also rule that you can not see some of the exhibits that the lawyers want you to see. And sometimes I may order you to disregard things that you see or hear, or that I strike from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

INSTRUCTION NO.

DIRECT AND CIRCUMSTANTIAL EVIDENCE—INFERENCES

There are, generally speaking, two types of evidence from which a jury may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of a chain of facts which point to the existence or non-existence of certain other facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence. The law simply requires that you find the facts in accord with all the evidence in the case, both direct and circumstantial.

While you must consider only the evidence in this case, you are permitted to draw reasonable inferences from the testimony and exhibits, inferences you feel are justified in the light of common experience. An inference is a conclusion that reason and common sense may lead you to draw from facts which have been proved.

By permitting such reasonable inferences, 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 testimony and evidence in this case.

INSTRUCTION NO.

EXPERT WITNESS

Certain testimony will be given in this case by experts; that is, by persons who are specially qualified by experience or training and possess knowledge on matters not common to mankind in general. The law permits such persons to give their opinions regarding such matters. You are not required to accept such opinions. The testimony of experts is to be considered like any other testimony and is to be tried by the same tests, and should receive the same weight and credit as you deem it entitled to, when viewed in connection with all the other facts and circumstances, and its weight and value are questions for you.

If you decide the opinion is not based upon sufficient education and experience, or that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

INSTRUCTION NO.

RULINGS, EVIDENCE FOR LIMITED PURPOSE, REDACTIONS

At times during trial, I will rule on the attorneys' objections to admitting certain items into evidence. Questions relating to the admissibility of evidence are solely questions of law for me. You must not concern yourselves with the reasons for my rulings and do not draw any inferences from my rulings. Consider only the evidence admitted.

[If Relevant] Some evidence is admitted for a limited purpose only. When I instruct you that particular evidence is admitted for a limited purpose, you must consider that evidence only for that purpose and for no other.

[If Relevant] Some of the exhibits may contain redactions. The portions of those exhibits have been redacted either because I have excluded the redacted portions from the evidence or because the parties have agreed that the redacted portions should not be admitted. You should disregard any redactions just as you would disregard any other evidence that I have excluded from the record.

INSTRUCTION NO.
NUMBER OF WITNESSES

The weight to be given the evidence is determined not by the number of witnesses or the amount of testimony produced by either side, but by the credibility of the witnesses and the nature and quality of their testimony. The evidence of one witness who is entitled to full credit is sufficient for the proof of any fact in this case, and you would be justified in returning a verdict in accordance with such testimony even though a number of witnesses gave conflicting testimony, if from the consideration of the whole case and the reliability and credibility of the various witnesses you believe the one witness as opposed to the greater number of witnesses.

INSTRUCTION NO.
CREDIBILITY OF WITNESSES

Although you must consider all of the evidence, you are not required to accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness you should consider the witness’ relationship to the government or to the defendant; any interest the witness may have in the outcome of the case; the witness’ manner while testifying; the opportunity and ability to observe or acquire knowledge concerning the facts about which the witness testified; the witness’ candor, fairness and intelligence; and the extent to which the witness has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

[If defendant Testifies] The testimony of the defendant should be weighed and his **[or her]** credibility evaluated in the same way as that of any other witness.

When weighing conflicting testimony you should consider whether the discrepancy has to do with a material fact or with an unimportant detail, and should keep in mind that innocent misrecollection—like failure to recall—is not uncommon.

In addition, while you must consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by either direct or circumstantial evidence. I caution you, however, that the process of drawing inferences from the evidence is not a matter of guesswork or speculation. In order to return a

verdict of guilty, you still must be satisfied that the government has proved a defendant's guilt beyond a reasonable doubt on all of the elements of the offense.

INSTRUCTION NO.

IMPEACHMENT BY PRIOR STATEMENTS

The testimony of a witness may be discredited or “impeached” by showing that his or her testimony at trial differs in some significant way from statements this witness made before the trial. This difference may be direct, where the witness’ prior statements literally contradict the trial testimony, or it may be indirect, as where a witness provides testimony at trial the witness did not reveal earlier when he or she had the opportunity and reason to speak and did not do so, and, further, does not provide an adequate explanation for the silence. You are to decide if the explanation is adequate.

You are to determine the weight, if any, to be given a witness’ testimony whose trial testimony varies from the witness’ earlier statements. If you conclude a witness has knowingly testified falsely about any matter, you may distrust that witness’ testimony regarding any other matters. You may reject that witness’ testimony completely or give it such weight as you think it deserves.

INSTRUCTION NO.

DUTY OF JURY

In considering the evidence, you are expected to use your good sense; consider the evidence for only those purposes for which it has been admitted, and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

You are to perform your duty without bias as to any party or person. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. 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.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything but the evidence in, and the law applicable to, this case.

INSTRUCTION NO.

NON-TESTIFYING DEFENDANT

The defendant **[may/did]** not testify and I remind you that you cannot consider his **[her]** decision not to testify as evidence of guilt. You must understand that the Constitution of the United States grants to a defendant the right to remain silent. That means the right not to testify. Further, the law does not require a defendant in a criminal case to call any witnesses or produce any evidence. The right to not testify personally, and to not put on any witnesses or evidence are constitutional rights in this country. They are very carefully guarded, and you must not presume or infer guilt from the fact that a defendant does not take the witness stand and testify or call any witnesses.

Always keep in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

INSTRUCTION NO.

CAUTION—PUNISHMENT

It is human nature to wonder what the consequences of your verdict may be, but you must ignore that altogether in your deliberations. The punishment provided by law for the crime **[crimes]** charged is a matter exclusively within the province of the Court and may not be considered by the jury in any way in deciding whether a defendant is guilty or not guilty of the crime **[crimes]** charged.

INSTRUCTION NO.

NOTE-TAKING

The Court will permit you to take notes during this trial, if you want. If you do take notes, remember that any notes that you take are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. Your notes are not evidence.

If you do not take notes, you should not be influenced by the notes of other jurors but should rely on your independent recollection of the evidence. Even if you do take notes, you should not be unduly influenced by the notes of other jurors if they differ from yours. There can be a tendency to attach too much importance to what someone has written down, but notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony. Remember, something that may not have seemed important at the time, and thus was not written down in your notes, may take on greater importance later in the trial in light of all the evidence presented, the Court's instructions on the law, and the final arguments.

Therefore, don't attach undue importance to your notes, or be unduly influenced by another juror's notes. Your notes are not evidence, and are by no means a complete summary of the trial. They are only an aid to your memory, and it is your collective memory that is your greatest asset in deciding this case.

INSTRUCTION NO.

CONCLUSION OF PRELIMINARY INSTRUCTIONS

Neither in these instructions, nor in any ruling, action or remark that I make during the course of this trial, do I intend to interpose any opinion or suggestion as to how I would resolve any of the issues of this case. If I make any remark that you believe indicates how I would decide this case, I instruct you to disregard such remark.

The trial will now begin. You will hear opening statements by counsel, then the evidence the parties wish to present, and then closing arguments from counsel. Following closing arguments, I will have a few remaining instructions to give you concerning your deliberations.

[Concluding Instructions]

INSTRUCTION NO.

DELIBERATIONS

Your verdict must represent the considered judgment of each juror. In order to return a verdict, each juror must agree upon the verdict and your verdict must be unanimous.

As jurors, you have a duty to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without sacrificing your individual judgment. Each of you must decide the case for yourself, but do so only after considering the evidence impartially with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. But do not surrender your honest conviction 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.

You are not partisans. You are judges—judges of facts. Your sole interest is to ascertain the truth from the evidence in the case.

INSTRUCTION NO.

DELIBERATION AS A BODY

A final suggestion by the court—not technically an instruction upon the law—may assist your deliberations. The attitude of jurors at the outset of and during their deliberations is important. It is seldom productive for a juror, immediately upon entering the jury room, to make an emphatic expression of his or her opinion upon the case or to announce a determination to stand for a certain verdict. The reason is obvious: we are all human and it is difficult to recede from a position once definitely stated, even though later convinced it is unsound.

Jurors are selected for the purpose of doing justice. This presupposes and requires deliberation—counseling together in an effort to agree. Have in mind at all times, therefore, that you are a deliberative body, selected to function as judges of the facts in a controversy involving the substantial rights of the parties. You will make a definite contribution to efficient administration of justice when and if you arrive at a just and proper verdict under the evidence which has been admitted. No one can ask more and you will not be satisfied to do less.

INSTRUCTION NO.

DELIBERATION PROCEDURE

Upon retiring to the jury room you should first select one of your number to act as your foreperson, who will preside over your deliberations and be your spokesperson here in court. The second thing you should do is read the court's instructions. One of the purposes of the instructions is to guide your deliberations. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict must be based but, for your verdict to be valid, you must follow the court's instructions throughout your deliberations. Remember, you are judges of the facts, but you are bound by your oath to follow the law stated in the instructions.

A form of verdict has been prepared for your convenience. When you have reached unanimous agreement as to your verdict, you will have your foreperson fill it in, date and sign it, and then notify my clerk that you have reached a verdict. The foreperson will carry the completed verdict form into the courtroom and hand it to the clerk when instructed to do so.

INSTRUCTION NO.

COMMUNICATIONS WITH THE COURT

If, during your deliberations, you should desire to communicate with the court, please reduce your message or question to writing, signed by the foreperson or one or more of you, and pass the note to my clerk, who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

During your deliberations, you must also not communicate with, or provide any information to, anyone about this case by any means. None of you should ever attempt to communicate with me about the merits of the case in any way other than by a signed writing. I will not communicate with any of you on any subject involving the merits of the case other than in writing, or orally here in open court.

Date

ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE

[Verdict Samples]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CRIMINAL ACTION
No. xx-xxxxxx-01-EFM

[DEFENDANT],
Defendant.

VERDICT

We, the jury, impaneled and sworn in the above-entitled case, upon our oaths, do make the following answer to the question propounded by the Court:

1. As to Count 1, [Crime], we find defendant [Name] is

Not Guilty _____ Guilty _____

2. As to Count 2, [Crime], we find defendant [Name] is

Not Guilty _____ Guilty _____

3. As to Count 3, [Crime], we find defendant [Name] is

Not Guilty _____ Guilty _____

4. Were the answers to the above questions unanimous?

Yes _____ No _____

Date

Presiding Juror

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CRIMINAL ACTION
No. xx-xxxxx-01-EFM

[DEFENDANT],
Defendant.

VERDICT

We the jury, impaneled and sworn in the above-entitled case, upon our oaths, do make the following answers to the questions propounded by the Court:

1. As to the crime charged in Count 1 of the Indictment how do you find the defendant?

Guilty _____ Not Guilty _____

2. Were the answers to the above questions unanimous?

Yes _____ No _____

Date

Presiding Juror

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CRIMINAL ACTION
No. xx-xxxxx-01-EFM

[DEFENDANT],
Defendant.

VERDICT

We the jury, impaneled and sworn in the above-entitled case, upon our oaths, do make the following answers to the questions propounded by the Court:

1. As to the crime charged in **Count 1** of the Superseding Indictment how do you find the defendant?

Guilty _____ Not Guilty _____

2. **(Answer this question only if you found the defendant guilty on Count 1; otherwise, skip to Question 3).**

We further find, beyond a reasonable doubt, as to **Count 1**, that the quantity of methamphetamine that the defendant possessed with the intent to distribute amounted to:

_____ 50 grams or more of methamphetamine

_____ 5 grams or more, but less than 50 grams, of methamphetamine

_____ less than 5 grams of methamphetamine

....

Date

Presiding Juror

[Occasional Instructions]

INSTRUCTION NO.

INDICTMENT – AND/OR

It is permissible for an indictment to use the word "and" although the statute employs the word "or." In other words, a crime denounced in the statute disjunctively ("or") may be alleged in an indictment in the conjunctive ("and"), and thereafter proven in the disjunctive ("or").

INSTRUCTION NO.

UNANIMITY OF THEORY

Your verdict must be unanimous. Count[s] [*n*] of the Indictment accuses the defendant of committing the following acts: **[specify various alleged acts]**.

The government does not have to prove all of these different acts for you to return a guilty verdict on Count[s] [*n*].

But in order to return a guilty verdict, all twelve of you must agree upon which of the listed acts, if any, the defendant committed and that he [**she**] committed at least one of the acts listed.

INSTRUCTION NO.

CAUTION ON RECORDED CONVERSATIONS

During this trial, you have heard sound recordings of certain conversations. These conversations were legally recorded; they are a proper form of evidence and may be considered by you as you would any other evidence. You were also **[given transcripts] [shown closed captioning]** of those recorded conversations.

Keep in mind that the **[transcripts] [closed captioning]** is not evidence. It was given to you only as a guide to help you follow what was being said. The recordings themselves are the evidence. If you noticed any differences between what you heard on the recordings and what you read in the **[transcripts] [closed captioning]**, you must rely on what you heard, not what you read. If you could not hear or understand certain parts of the recordings, you must ignore the **[transcripts] [closed captioning]** as far as those parts are concerned.

INSTRUCTION NO.

SPECIFIC INVESTIGATION TECHNIQUE NOT REQUIRED

You may hear testimony as to the manner in which the government conducted its investigation in this case including certain investigative methods or techniques that were used and certain investigative methods or techniques that were not used. In attempting to prove its case, the government is under no obligation to use all investigative methods that are available to it or use any particular method. The question is whether the evidence presented is sufficient to convince you beyond a reasonable doubt of a defendant's guilt.

INSTRUCTION NO.

EVIDENCE OF GOOD CHARACTER

Defendant has offered evidence of someone's opinion as to his **[or her]** good character. You should consider such evidence along with all the other evidence in the case.

Evidence of good character may be sufficient to raise a reasonable doubt whether the defendant is guilty, because you may think it improbable that a person of good character would commit such a crime. Evidence of defendant's character, inconsistent with those traits of character ordinarily involved in the commission of the crime charged, may give rise to a reasonable doubt.

You should also consider any evidence offered to rebut the evidence offered by the defendant.

You should always bear in mind, however, that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

INSTRUCTION NO.

EVIDENCE OF REPUTATION FOR HONESTY

The defendant has offered evidence in the form of reputation for honesty and integrity. You should consider such evidence along with all the other evidence in the case.

Evidence in the form of reputation for honesty and integrity may be sufficient to raise a reasonable doubt whether the defendant is guilty, because you may think it improbable that a person of honesty and integrity would commit such a crime. Evidence in the form of reputation of a defendant's honesty and integrity may be inconsistent with those traits of character ordinarily involved in the commission of the crime charged, and may give rise to a reasonable doubt.

You should also consider any evidence offered to rebut the evidence offered by the defendant.

You will always bear in mind, however, that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

INSTRUCTION NO.

POSSESSION: ACTUAL OR CONSTRUCTIVE POSSESSION

The law recognizes two kinds of possession: actual possession and constructive possession. Actual possession exists when a person has direct physical control over an item. A person who, although not in actual possession, knowingly has the power and intent at a given time to exercise dominion or control over an object, either directly or through another person or persons, is then in constructive possession of it.

More than one person can be in possession of an object at the same time (meaning two or more people may jointly possess an object) if each knows of its presence and has the power and intent to control it.

In the situation where the object is found in a place (such as a room or car) occupied by more than one person, you may not infer power and intent to exercise control over the object based solely on joint occupancy. Mere control over the place in which the object is found is not sufficient to establish constructive possession. Instead, in this situation, the government must prove some connection between the particular defendant and the object demonstrating the power and intent to exercise control over the object.

INSTRUCTION NO.

ACCOMPLICE—INFORMANT—IMMUNITY

[as appropriate] Accomplice

An accomplice is someone who joined with another person in committing a crime, voluntarily and with common intent. The testimony of an accomplice may be received in evidence and considered by you, even though it is not supported by other evidence. You may decide how much weight it should have.

You are to keep in mind, however, that accomplice testimony should be received with caution and considered with great care. You should not convict a defendant based on the unsupported testimony of an alleged accomplice, unless you believe the unsupported testimony beyond a reasonable doubt.

Informant

An informant is someone who provides evidence against someone else for a personal reason or advantage. The testimony of an informant alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilt, even though not corroborated or supported by other evidence. You must examine and weigh an informant's testimony with greater care than the testimony of an ordinary witness. You must determine whether the informant's testimony has been affected by self-interest, by an agreement he has with the government, by his **[or her]** own interest in the outcome of the case, or by prejudice against the defendant.

You should not convict a defendant based on the unsupported testimony of an informant, unless you believe the unsupported testimony beyond a reasonable doubt.

INSTRUCTION NO.

IMMUNITY

A person may testify under a grant of immunity (an agreement with the government). His testimony alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilt even though it is not corroborated or supported by other evidence. You should consider testimony given under a grant of immunity with greater care and caution than the testimony of an ordinary witness. You should consider whether testimony under a grant of immunity has been affected by the witness's own interest, the government's agreement, the witness's interest in the outcome of the case, or by prejudice against the defendant.

On the other hand, you should also consider that an immunized witness can be prosecuted for perjury for making a false statement. After considering these things, you may give testimony given under a grant of immunity such weight as you feel it deserves.

You should not convict a defendant based on the unsupported testimony of an immunized witness, unless you believe the unsupported testimony beyond a reasonable doubt.

INSTRUCTION NO.

ACCOMPLICE—CO-DEFENDANT—PLEA AGREEMENT

The government called as one of its witnesses an alleged accomplice, who was named as a co-defendant in the indictment. The government has entered into a plea agreement with the co-defendant, providing [**e.g., for the dismissal of some charges and a recommendation of a lesser sentence than the co-defendant would otherwise likely receive**]. Plea bargaining is lawful and proper, and the rules of this court expressly provide for it.

An alleged accomplice, including one who has entered into a plea agreement with the government, is not prohibited from testifying. On the contrary, the testimony of an alleged accomplice may, by itself, support a guilty verdict. You should receive this type of testimony with caution and weigh it with great care. You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that testimony beyond a reasonable doubt. The fact that an accomplice has entered a guilty plea to the offense charged is not evidence of the guilt of any other person.

INSTRUCTION NO.

WITNESS'S USE OF ADDICTIVE DRUGS

The testimony of a drug abuser must be examined and weighed by the jury with greater caution than the testimony of a witness who does not abuse drugs.

[Identify witnesses] who testified may be considered either former or present abusers of drugs.

You must determine whether the testimony of that witness has been affected by the use of drugs or the need for drugs.

INSTRUCTION NO.

VOLUNTARINESS OF STATEMENT BY DEFENDANT

Evidence may be presented about a statement attributed to the defendant, alleged to have been made after the commission of the crime (or crimes) charged in this case but not made in court. Such evidence should always be considered by you with caution and weighed with care. You should give any such statement the weight you think it deserves, after considering all the circumstances under which the statement was made.

In determining whether any such statement is reliable and credible, consider factors bearing on the voluntariness of the statement. For example, consider the age, gender, training, education, occupation, and physical and mental condition of the defendant, and any evidence concerning his **[or her]** treatment while under interrogation if the statement was made in response to questioning by government officials, and all the other circumstances in evidence surrounding the making of the statement.

After considering all this evidence, you may give such weight to the statement as you feel it deserves under all the circumstances. If you determine that the statement is unreliable or not credible, you may disregard the statement entirely.

INSTRUCTION NO.
SUMMARIES AND CHARTS

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

INSTRUCTION NO.

KNOWINGLY—DELIBERATE IGNORANCE

When the word “knowingly” is used in these Instructions, it means that the act was done voluntarily and intentionally, and not because of mistake or accident. Although knowledge on the part of the defendant cannot be established merely by demonstrating that the defendant was negligent, careless, or foolish, knowledge can be inferred if the defendant deliberately blinded himself to the existence of a fact. Knowledge can be inferred if the defendant was aware of a high probability of the existence of the fact in question, unless the defendant did not actually believe the fact in question.

INSTRUCTION NO.

STIPULATION [e.g., **PRIOR FELONY CONVICTION**]

You have heard evidence, through a stipulation, that the defendant has a prior felony conviction, that is, a crime punishable by imprisonment for a term exceeding one year. Evidence of this conviction has been introduced only because the crimes charged in Counts [X, Y] - felon in possession of a firearm or ammunition - requires the United States to prove, beyond a reasonable doubt, that the defendant has been so convicted. In other words, it is an element of the crime charged.

The parties have agreed that the stipulation shall constitute proof beyond a reasonable doubt as to the second element of the charge contained in the indictment in Counts [X, Y]. In other words, you should consider the second element of the crime charged—that the defendant was previously convicted of a felony, a crime punishable by imprisonment for a term exceeding one year—proven beyond a reasonable doubt.

You should not consider this stipulation as evidence of guilt as to any other element of any other crime he is charged with.

[Specific Criminal Offenses]

INSTRUCTION NO.

AID AND ABET

The indictment [**specify counts**] also charges a violation of 18 U.S.C. § 2, which provides that: “Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”

This law makes it a crime to intentionally help someone else commit a crime. To find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: every element of the charged crime was committed by someone other than the defendant, and

Second: the defendant intentionally associated himself in some way with the crime and intentionally participated in it as he would in something he wished to bring about. This means that the government must prove that the defendant consciously shared the other person’s knowledge of the underlying criminal act and intended to help him.

The defendant need not perform the underlying criminal act, be present when it is performed, or be aware of the details of its commission to be guilty of aiding and abetting. But a general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of a crime and knowledge that a crime is being committed This means that the government must prove that the defendant consciously shared the other person’s knowledge of the underlying criminal act and intended to help him..

INSTRUCTION NO.

AIDING AND ABETTING DISTINCT FROM CONSPIRACY

Sometimes jurors have difficulty understanding the legal difference between the criminal offenses of “conspiracy” and “aiding and abetting.”

“Conspiracy” depends and is based on any agreement, unspoken or expressed, whether carried over into a conspiratorial act or not; whereas “aiding and abetting” depends on a showing of conscious participation in a criminal act, i.e., knowingly assisting in the performance of the criminal act charged.

It is the element of “agreement” that distinguishes conspiracy from aiding and abetting.

INSTRUCTION NO.

FALSE STATEMENT
18 U.S.C. § 1001(a)(2)

Defendant is charged in Count One with a violation of 18 U.S.C. Section 1001(a)(2).

This law makes it a crime to knowingly and willfully make a false statement or representation concerning a material fact within the jurisdiction of the executive branch of the United States.

To find the defendant guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: the defendant made a false, fictitious, or fraudulent statement or representation to the government; specifically, [**describe statement**].

Second: the defendant made the statement knowing it was false;

Third: the defendant made the statement willfully, that is deliberately, voluntarily and intentionally, and with knowledge that his conduct was unlawful;

Fourth: the statement was made in a matter within the jurisdiction of the executive branch of the United States; and,

Fifth: the statement was material to the [**government agency**].

A fact is "material" if it has a natural tendency to influence or is capable of influencing a decision of the [**government agency**]. It is not necessary that the [**government agency**] was in fact influenced in any way.

[If more than one statement is made:]

The Government does not have to prove each of these representations was false for you to find the Government has proven the first element. But in order to return a guilty verdict, all twelve of you must agree upon which of the listed representations, if any, the defendant committed, and that he made at least one of the representations listed.

INSTRUCTION NO.

CONSPIRACY—DEFINED

A conspiracy is an agreement between two or more persons to accomplish an unlawful purpose. It is a kind of “partnership in criminal purposes” in which each member becomes the agent or partner of every other member. The evidence may show that some of the persons involved in the conspiracy charged by Superseding Indictment are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged or tried together in one proceeding.

The evidence need not show that the members entered into an express or formal agreement. Nor does the law require proof that the members agreed on all the details. But the evidence must show that the members of the alleged conspiracy came to a mutual understanding to try to accomplish a common and unlawful plan.

If you are convinced that any of the charged conspiracies in the Superseding Indictment existed, then you must next determine which, if any, defendants were part of the conspiracy—in other words, which, if any, defendants knew at least the essential goals of the conspiracy and voluntarily chose to be part of it. The law does not require proof that the defendant knew all the other members of the conspiracy or knew all the details about how activities were to be carried out. A person may belong to a conspiracy for a brief period of time or play a minor role. On the other hand, proof is not sufficient if it merely shows that the defendant knew about the existence of the conspiracy or was associated with members of the conspiracy. Rather, the evidence must show the defendant knowingly joined the conspiracy with the intent to advance its purposes.

You are also required to find that interdependence existed among the members of the conspiracy. This means that the members intended to act for their shared mutual benefit. To satisfy

this element, you must conclude that the defendant participated in a shared criminal purpose and that his actions constituted an essential and integral step toward the realization of that purpose.

INSTRUCTION NO.
CONSPIRACY—PROOF

The existence of a conspiratorial agreement may be inferred from the circumstances and the conduct of the parties. The essence of the crime of conspiracy is an agreement to violate the law; mere knowledge or approval in the object and purpose of a conspiracy, without an agreement to cooperate and achieve such object or purpose, does not make one a party to a conspiracy.

In determining whether the conspiracy charged in **[Count(s)]** of the Indictment existed, you should consider the actions and declarations of the alleged co-conspirators, together with any reasonable inferences to be drawn from such evidence. It is not necessary for the government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

The government is not required to prove that the parties to, or members of, the agreement or conspiracy were successful in achieving any or all of the objects of the agreement or conspiracy.

INSTRUCTION NO.

CO-CONSPIRATOR STATEMENTS

If it is established beyond a reasonable doubt that a conspiracy in fact existed and that a particular defendant became a member of the conspiracy, then the acts and declarations of any other member of such conspiracy, in or out of that defendant's presence, done in furtherance of the objects of the conspiracy and during its existence, may be considered as evidence against such defendant. When persons enter into an agreement for an unlawful purpose, they become agents for one another.

However, statements or acts of any conspirator which are not in furtherance of a conspiracy, or made before its existence or after its termination, may be considered as evidence only against the person making them.

INSTRUCTION NO.

CONSPIRACY—MULTIPLE OBJECTIVES

While the government must prove that there was an unlawful object to the conspiracy, the government need not prove that the conspiracy had only a criminal purpose. In other words, it is not a defense to the conspiracy charge that a defendant may have had legal objectives as well as illegal objectives.

Any conspiracy may have several objectives, but if any one of them, even if it is only a secondary objective, is to violate the law, then the conspiracy is unlawful.

INSTRUCTION NO.
CONTROLLED SUBSTANCES—CONSPIRACY
21 U.S.C. § 846

Defendant is **[Defendant are]** each charged in **[Count n]** with a violation of Section 846 of Title 21 of the United States Code. The Indictment charges that the crime was committed **[dates]**.

This law makes it a crime for anyone to conspire with another person to violate federal laws pertaining to controlled substances. In this case, the defendant is charged with **[specify drug offense[s]: e.g., conspiring to: possess with the intent to distribute a mixture or substance containing a detectable amount of [controlled substance], distributing a mixture or substance containing a detectable amount of [controlled substance], maintain a drug involved premises or use a communication facility to facilitate drug trafficking]**.

To find one or more defendants guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: that from **[date to date]** within the District of Kansas two or more persons agreed to violate federal drug laws;

Second: the defendant knew the essential objective of the conspiracy;

Third: the defendant knowingly and voluntarily involved himself in the conspiracy;

Fourth: there was interdependence among the members of the conspiracy; and

Fifth: the overall scope of the conspiracy involved at least **[amount]** of **[controlled substance]**.

“To possess with intent to distribute” 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.

“To distribute” means to deliver or transfer possession or control from one person to another, with or without any financial interest in the transaction, and includes the sale of something by one person to another.

[Controlled substance] is a controlled substance within the meaning of the law.

INSTRUCTION NO.

DRUG QUANTITIES—INDIVIDUAL CONSPIRATOR

As to any individual defendant who you find guilty of the crime of conspiracy charged in [Count *n*], you must also determine the quantity of **[controlled substance]** attributable to that defendant, irrespective of the quantity involved in the conspiracy as a whole. An individual defendant may be attributed both with: (1) quantities of controlled substances which he or she was directly involved, so long as these quantities are within the scope of the conspiracy; and (2) quantities of controlled substances with which other coconspirators were directly involved, so long as those quantities were both within the scope of the conspiracy and reasonably foreseeable to the defendant.

An act is “reasonably foreseeable” if a reasonable person who knew everything that the defendant knew at the time would have been able to know of the act in advance with a fair degree of probability.

On the verdict form provided with these instructions, you will be asked whether the drug quantity attributed to the defendant as an individual is:

- 500 grams or more of a mixture or substance containing a detectable amount of **[controlled substance]**; or
- 50 grams or more, but less than 500 grams, of a mixture or substance containing a detectable amount of **[controlled substance]**; or
- less than 50 grams of a mixture or substance containing a detectable amount of **[controlled substance]**.

You are required to determine the quantity of **[controlled substance]** attributable to each defendant beyond a reasonable doubt.

INSTRUCTION NO.

CONTROLLED SUBSTANCES—POSSESSION WITH INTENT TO DISTRIBUTE
21 U.S.C. § 841(a)(1)

Defendant is charged in [**Count n**] with a violation of Section 841(a)(1) of Title 21 of the United States Code. The Indictment charges that the crime occurred on or about [**date**].

This law makes it a crime to possess a controlled substance with the intent to distribute it.

To find the defendant guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: the defendant knowingly or intentionally possessed a controlled substance as charged;

Second: the substance was in fact [**controlled substance**];

Third: the defendant possessed the substance with the intent to distribute it.

[**Controlled substance**] is a controlled substance within the meaning of the law.

To “possess with intent to distribute” 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.

The quantity of the drug possessed is a circumstance which may permit the inference that the possessor had an intent to sell, deliver or otherwise distribute.

To meet its burden of proving the first element, the government is not required to prove that the defendant knew the precise nature of the controlled substance. But it must prove that the defendant knew that the substance that he distributed was a controlled substance. The government can meet this burden by proving either that: (1) the defendant knew that the substance he distributed is listed as controlled substance under the Controlled Substances Act, even if he did not know the identity of the controlled substance; or (2) the defendant knew that the specific

substance was **[controlled substance]**, even if he did not know that **[controlled substance]** is listed as a controlled substance under the Controlled Substances Act.

INSTRUCTION NO.

POSSESSION OF A FIREARM IN FURTHERANCE
OF A DRUG TRAFFICKING CRIME
18 U.S.C. § 924(c)(1)

Defendant is charged in [**Count n**] with a violation of Section 924(c)(1) of Title 18 of the United States Code. The Superseding Indictment charges that the crime occurred on or about [**date**].

This law makes it a crime to possess a firearm in furtherance of a drug trafficking crime.

To find the defendant guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: the defendant committed the crime of [**specific drug charge**], a controlled substance, as charged in [**Count n**] of the Indictment, which is a drug trafficking crime;

Second: the defendant possessed a firearm in furtherance of this crime.

The term “firearm” means any weapon which 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.

Possession “in furtherance of” means for the purpose of assisting in, promoting, accomplishing, advancing, or achieving the goal or objective of the underlying offense.

Mere presence of a firearm at the scene is not enough to find possession in furtherance of a drug trafficking crime, because the firearm’s presence may be coincidental or entirely unrelated to the underlying crime. Some factors that may help in determining whether possession of a firearm furthers, advances, or helps advance a drug trafficking crime include, but are not limited to:

1. the type of criminal activity that is being conducted;

2. accessibility of the firearm;
3. the type of firearm;
4. whether the firearm is stolen;
5. the status of the possession (legitimate or illegal);
6. whether the firearm is loaded;
7. the time and circumstances under which the firearm is found; and
8. proximity to drugs or drug profits.

INSTRUCTION NO.

POSSESSION OF A FIREARM **[OR AMMUNITION]** BY A FELON
18 U.S.C. § 924(g)(1)

The defendant is charged in **[Count n]** with a violation of 18 U.S.C. § 922(g)(1).

This law makes it a crime for any person who has been previously convicted in any court of a felony to knowingly possess any firearm **[or ammunition]**, in or affecting interstate or foreign commerce.

To find the defendant guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

- First:* the defendant knowingly possessed a firearm **[or ammunition]**;
- Second:* the defendant knew he was convicted of a felony, that is, a crime punishable by imprisonment for a term exceeding one year, before he possessed the firearm **[or ammunition]** **[—the parties have stipulated that this element has been satisfied]**;
- Third:* the defendant knew he was convicted of a felony at the time he possessed a firearm **[or ammunition]**; and
- Fourth:* before the defendant possessed the firearm **[or ammunition]**, the firearm **[or ammunition]** had moved at some time from one state to another.

[If ammunition:] The term “ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

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.

Possession and ownership are distinct concepts and the statute at issue punishes possession, not ownership. It is not necessary for the government to prove that the defendant owned the firearm **[or ammunition]**; mere possession is enough.

Actual possession occurs where a person has direct physical control over the firearm **[or ammunition]** at a given time. Thus, to convict on actual possession, the defendant must have held the firearm **[or ammunition]** “for a mere second or two” during the time specified in the indictment.

Proof that a firearm **[or ammunition]** was manufactured in another state or country and was possessed by the defendant in Kansas is sufficient to establish the nexus with interstate or foreign commerce. The United States is not required to prove that the defendant himself moved the firearm **[or ammunition]** in interstate or foreign commerce.

INSTRUCTION NO.

FALSE STATEMENT TO A BANK
18 U.S.C. § 1014

The defendant is charged in **[Count n]** with a violation of 18 U.S.C. § 1014. This law makes it a crime to knowingly make a false statement to a federally insured bank for the purpose of influencing the bank to make a loan.

To find the defendant guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: **[Bank name]** was federally insured;

Second: the defendant made a false statement to **[Bank name]** in connection with an application for a loan. **[Specifically that]**.

The Government does not have to prove each of these representations was false for you to find the Government has proven the second element. But in order to return a guilty verdict, all twelve of you must agree upon which of the listed representations, if any, the defendant committed, and that he made at least one of the representations listed.

Third: the defendant knew the statement was false when he made it; and

Fourth: the defendant intended to influence **[Bank name]** in connection with an application for the loan through the Paycheck Protection Program.

It is not necessary, however, to prove that the institution involved was in fact influenced or misled.

INSTRUCTION NO.

BANK FRAUD
18 U.S.C. § 1344(2)

The defendant is charged in count 2 with a violation of 18 U.S.C. § 1344(2). This law makes it a crime to execute or attempt to execute a scheme or artifice to obtain any money or other property of a financial institution by means of false or fraudulent pretenses, representations, or promises.

To find the defendant guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: the defendant knowingly executed a scheme or artifice to obtain money or property from **[Bank name]** by means of false or fraudulent representations; **[specifically that ...]**.

The Government does not have to prove each of these representations was false for you to find the Government has proven the first element. But in order to return a guilty verdict, all twelve of you must agree upon which of the listed representations, if any, the defendant committed, and that he made at least one of the representations listed.

Second: **[Bank name]** was a financial institution within the meaning of the law; in this case that means that the government must prove that **[Bank name]** was insured by the Federal Deposit Insurance Corporation;

Third: the defendant acted with intent to deceive a bank into giving up bank property that it owned; and

Fourth: the false or fraudulent pretenses, representations, or promises that the defendant made were material, meaning they would naturally tend to influence, or were capable of influencing the decision of, **[Bank name]**.

The crime of bank fraud requires that the defendant knowingly provided materially false information to **[Bank name]** in order to induce **[Bank name]** to issue the loan. If the defendant knowingly provided materially false information to induce such a loan, the crime was complete, and it is irrelevant whether the defendant intended to repay the loan, was capable of repaying the

loan, or that the loan could potentially be forgiven. It is not a defense to the crime of bank fraud that the defendant held a good-faith belief that **[Bank name]** would be repaid and would not sustain a loss.

INSTRUCTION NO.

INTENT TO DEFRAUD OR DECEIVE

A defendant acts with the requisite “intent to defraud” or “intent to deceive” if the defendant acted knowingly and with the specific intent or purpose to deceive, ordinarily for the purpose of causing some financial loss to another or bringing about some financial gain to the defendant. Put more simply, an “intent to defraud” is an intent to deceive or cheat someone.

INSTRUCTION NO.

GOOD FAITH

Good faith is a defense to the charges involving false statements or fraud in **[specify counts]**. You may determine whether a defendant had an honest, good faith belief in the truth of the specific misrepresentations alleged in the indictment in determining whether or not the defendant acted with intent to defraud. However, a defendant's belief that the victims of the fraud will be paid in the future or will sustain no economic loss is no defense to the crime.

A plan or scheme is not carried out with an intent to defraud if it was devised or carried out in good faith; that is, with an honest belief in the truth or the representations made.

The defendant has no burden to establish a good faith defense. Rather, the burden is on the government to prove intent to defraud beyond a reasonable doubt.