FINAL JURY INSTRUCTIONS - CRIMINAL FELONY CASES

UNITED STATES OF AMERICA

v.

GEZO G. EDWARDS,
WILLIAM MARTIN BOWMAN, and
HENRY BRANDON WILLIAMS,
Defendants

Criminal Case No.11-129 (CKK)

Ladies and Gentlemen, the time has now come when all of the evidence is in and you have heard the closing arguments of the lawyers. It is now up to me to instruct you on the law that should control your deliberations in this case. My instructions will be roughly divided into three parts. First, I will talk with you about some general principles of the law. Second, I will discuss with you instructions that apply to the elements of the offenses charged in this case and the defenses. Finally, I will have some closing remarks about your deliberations in this matter.

PART ONE

Let me begin with some general principles. First, I am sure you understand by now that the jury and the court – you and I – have quite different responsibilities in a trial.

Instruction 2.101

FUNCTION OF THE COURT

My function is to conduct this trial in an orderly, fair, and efficient manner; to rule on questions of law; and to instruct you on the law that applies in this case.

It is your duty to accept the law as I instruct you. You should consider all the instructions as a whole. You may not ignore or refuse to follow any of them.

Instruction 2.102

FUNCTION OF THE JURY

Your function, as the jury, is to determine what the facts are in this case. You are the sole judges of the facts. While it is my responsibility to decide what is admitted as evidence during the trial, you alone decide what weight, if any, to give to that evidence. You alone decide the credibility or believability of the witnesses.

You should determine the facts without prejudice, fear, sympathy, or favoritism. You should not be improperly influenced by anyone's race, ethnic origin, or gender. Decide the case solely from a fair consideration of the evidence.

You may not take anything I may have said or done as indicating how I think you should decide this case. If you believe that I have expressed or indicated any such opinion, you should ignore it. The verdict in this case is your sole and exclusive responsibility.

Instruction 2.103

JURY'S RECOLLECTION CONTROLS

If any reference by me or the attorneys to the evidence is different from your own memory of the evidence, it is your memory that should control during your deliberations.

Instruction 2.105

STATEMENTS OF COUNSEL

The statements and arguments of the lawyers are not evidence. They are only intended to assist you in understanding the evidence. Similarly, the questions of the lawyers are not evidence.

Occasionally during argument a lawyer for one side or the other may appear to state her or his belief or opinion concerning the facts in the case or the credibility of testimony. A lawyer is not permitted to state her or his belief or opinion during argument. He or she is permitted only to argue to you based upon what the evidence in this case shows. If you think a lawyer has expressed her or his personal belief or opinion during argument, you must disregard any such expression and judge the case only on the evidence.

Throughout the trial there have been times when one defense attorney may have asked questions regarding a defendant other than his client, or made objections or arguments on behalf of his client and the other defendants. In addition, you no doubt have noticed that counsel for the defendants have consulted with each other at times, and may have divided tasks to expedite matters, and to minimize or avoid duplication of efforts. Indeed in a case of this length it is natural for defense counsel to cooperate and consult with one another. You should not consider those circumstances to mean or suggest that the defendants are regarded as one person or one entity. Each defendant must be given separate consideration as to each of the charges and allegations against him.

You have heard testimony about witnesses meeting with attorneys and/or investigators before they testified. You are instructed that it is perfectly proper for a lawyer or investigator to interview a witness in preparation for trial.

Instruction 2.104

EVIDENCE IN THE CASE—STIPULATIONS

During your deliberations, you may consider only the evidence properly admitted in this trial. The evidence in this case consists of the sworn testimony of the witnesses, the exhibits that were admitted into evidence, the facts and testimony stipulated to by the parties.

During the trial, you were told that the parties had stipulated–that is, agreed–to certain facts. You should consider any stipulation of fact to be undisputed evidence.

During the trial, you were told that the parties had stipulated–that is, agreed–to what testimony a witness would have given if he or she had testified in this case. You should consider this stipulated testimony to be exactly what he or she would have said had he or she testified here.

When you consider the evidence, you are permitted to draw, from the facts that you find have been proven, such reasonable inferences as you feel are justified in the light of your experience. You should give any evidence such weight as in your judgment it is fairly entitled to receive.

The stipulations reached in this case between the parties follow this instruction.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	Criminal No. 11-129 (CKK)
v.	:	
	:	
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WILLIAM MARTIN BOWMAN, and	:	
HENRY BRANDON WILLIAMS,	:	
	:	
Defendants.	:	
	:	

STIPULATION

The parties, the United States, by and through Assistant United States Attorneys Steven B. Wasserman, Debra Long-Doyle and Zia Faruqui, and the Defendant Henry Williams, by and through his attorney, Greg Smith, hereby stipulate and agree as follows:

1. That Defendant Henry Brandon Williams was the user of Sprint telephone number 202-276-1299, a telephone number subscribed in the name of his sister, Kristal Williams, between the dates of January 13, 2011 through up to an including April 26, 2011, and that Henry Brandon Williams was the individual intercepted using telephone number 202-276-1299 during the wiretaps conducted over telephone numbers 202-445-1553 and 202-425-5430.

2. That Defendant Henry Brandon Williams was the person operating a gold Chrysler Sedan bearing Maryland Tag Number 4FPC20, registered in the name of his father, Henry Neal Williams, Sr., which was observed during surveillances conducted by the Federal Bureau of Investigation between January 13, 2011 up through and including April 26, 2011.

Submitted by the parties,

Date: 10/11/12

Henry Brandon Williams
Defendant

Date: 10-11-2012

Gregory Smith
Attorney for Defendant Henry Williams

Date: 10-11-12

Steven B. Wasserman
Debra Long-Doyle
Zia Faruqui
Assistant United States Attorneys

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	Criminal Case No. 11-129 (CCK)
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	:	
Defendants.	:	

GOVERNMENT AND DEFENDANT'S STIPULATIONS REGARDING TESTIMONY OF FEDERAL BUREAU OF INVESTIGATION SPECIAL AGENT WINIFRED FLEMING

Defendants GEZO GEONG EDWARDS, WILLIAM MARTIN BOWMAN, and HENRY BRANDON WILLIAMS, their attorneys, Eduardo Balarezo, Dwight Crawley, and Gregory Smith and Assistant U.S. Attorneys Debra Long-Doyle, Steven Wasserman and Zia Faruqui, **STIPULATE** that, if called as a witness at trial, FBI Special Agent Winifred Fleming would testify under oath, and without dispute to the following:

1. On or about November 10, 2010, an FBI Confidential Informant gave 61.4 grams of Cocaine Hydrochloride, DEA Lab # 3W21457, FBI Exhibit # 10 to Special Agent Winifred Fleming. Agent Fleming put the drugs (Government Exhibit 11) in a heat seal envelop and stored it in the FBI storage vault.

2. The surveillance video on Government's Exhibits 125 and 125A was taken on or about February 7, 2011, at 29 - 46th Street, SE in Washington, D.C. from approximately 3:14 p.m. to 3:30 p.m.

3. The surveillance video on Government's Exhibits 128 and 128A was taken on or about March 10, 2011, at 9210 Rolling View Drive in Lanham, Maryland from approximately 1:39 p.m. to 5:19 p.m.

3A. Surveilling Special Agent Fleming did not identify Mr. Gezo Edwards as a person she surveilled in the report she prepared memorializing her surveillance conducted on March 10, 2011.

4. The surveillance video on Government's Exhibits 131, 131A, 132, 132A, 134, 134A, 135, and 135A was taken on or about March 12, 2011, at 29 - 46th Street, SE in Washington, D.C. from approximately 1:05 p.m. to 6:29 p.m.

5. The surveillance video on Government's Exhibit 137, 137A, 138, 138A, 140 and 140A was taken on or about March 13, 2011, at 29 - 46th Street, SE in Washington, D.C. from approximately 11:45 a.m. to 4:17 p.m.

6. The surveillance video on Government's Exhibits 143 and 143A was taken on or about March 14, 2011, at 29 - 46th Street, SE in Washington, D.C. from approximately 10:58 a.m. to 7:43 p.m.

7. The surveillance video on Government's Exhibit 146, 146A, 147 and 147A was taken on or about March 15, 2011, at 29 - 46th Street, SE in Washington, D.C. from approximately 10:47 a.m. to 11:15 a.m.

8. The surveillance video on Government's Exhibit 169 and 169A was taken on or about March 23, 2011, at 29 - 46th Street, S.E. in Washington, D.C. from approximately 12:54 p.m. to 1:33 p.m.

[2]

9. The surveillance video on Government's Exhibit 166 and 166A was taken on or about April 5, 2011, at Burger Delight located at 3302 Kennilworth Avenue in Hyattsville, MD and the Public Storage Store located at 3005 Kennilworth Avenue in Hyattsville, MD from approximately 5:10 p.m. to 7:06 p.m.

9A. Defendant Henry Brandon Williams does not appear in any of the aforementioned surveillance videos

10. On or about April 25, 2011, the contents of Government Exhibit 14 (DEA Lab # 3W22197 , 11B and 11C containing Cocaine Hydrochloride, DEA Lab # 3W21457, FBI Exhibit Numbers 11.01, 11.02, and 11.03) were recovered from Unit A306 of the Public Storage Store located at 3005 Kennilworth Avenue in Hyattsville, MD by Special Agent Winifred Fleming. Agent Fleming put these items in a secure, sealed box which was stored in the FBI storage vault.

SO STIPULATED:

Ronald C. Machen Jr.
United States Attorney

Dated: 10-24-12

By: _____
Debra L. Long-Doyle
Steven B. Wasserman
Assistant United States Attorneys

Dated: 10/24/12

_____
Eduardo Balarezo, Esq.
Attorney for Gezo Edwards

Dated: 10/12/2012

_____
Dwight Crawley, Esq.
Attorney for William Bowman

Dated:

Gregory Smith, Esq.
Attorney for Henry Williams

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	**Criminal Case No. 11-129 (CCK)**
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GEZO GOEONG EDWARDS,	:	
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HENRY BRANDON WILLIAMS,	:	
	:	
Defendants.	:	

GOVERNMENT AND DEFENDANT'S STIPULATIONS REGARDING
TESTIMONY ABOUT CHEMCIAL ANALYSES

Defendants GEZO GEONG EDWARDS, WILLIAM MARTIN BOWMAN, and HENRY BRANDON WILLIAMS, their attorneys, Eduardo Balarezo, Dwight Crawley, and Gregory Smith and Assistant U.S. Attorneys Debra Long-Doyle, Steven Wasserman and Zia Faruqui, **STIPULATE** that:

1. If called, Jennifer McKay, an expert forensic chemist, would testify under oath, and without dispute to the following: that she conducted chemical analysis of Government's Exhibit 9 (cocaine purchased on 10-27-10) in a DEA Laboratory, and that this exhibit had not been opened prior to her analysis. Jennifer McKay would further testify that Government's Exhibit 9 was Cocaine Hydrochloride with a Gross Weight of 88.3 grams, Net Weight of 61.8 grams, Concentration or Purity of 57.4%, an Amount of Actual Drug of 35.4 grams, and a Reserve Weight of 60.8 grams. Jennifer McKay would further testify that Government's Exhibit 9 contained Phenacetin and

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Phenyltetrahydroimidazothiazole, also known as PT Hit. These findings are memorialized in Government's Exhibit 10 (DEA Laboratory Report).

2. If called, Jennifer McKay, an expert forensic chemist, would testify under oath and without dispute to the following: that she conducted chemical analysis of Government's Exhibit 11 (cocaine purchased on 11-10-10) in a DEA Laboratory, and that this exhibit had not been opened prior to her analysis. Jennifer McKay would further testify that Government's Exhibit 11 was Cocaine Hydrochloride with a Gross Weight of 89.7 grams, Net Weight of 61.4 grams, Concentration or Purity of 59.8%, an Amount of Actual Drug of 36.7 grams, and a Reserve Weight of 60.5 grams. Jennifer McKay would further testify that Government's Exhibit 11 contained Phenacetin and Phenyltetrahydroimidazothiazole, which is also known as PT Hit. These findings are memorialized in Government's Exhibit 12 (DEA Laboratory Report).
3. If called, Heather Hartshorn, an expert forensic chemist, would testify under oath and without dispute to the following: that she conducted chemical analysis of Government's Exhibit 56 (cocaine base purchased on 3-30-11) in a DEA Laboratory, and that this exhibit had not been opened prior to her analysis. Heather Hartshorn would further testify that Government's Exhibit 56 was Cocaine Base with a Gross Weight of 45.5 grams, Net Weight of 24.3 grams, Concentration or Purity of 26.1%, an Amount of Actual Drug of 6.3 grams, and a Reserve Weight of 23.9 grams. Heather Hartshorn would further testify that Government's Exhibit 56 contained Phenacetin and Phenyltetrahydroimidazothiazole, which is also known as PT Hit. These findings are memorialized in Government's Exhibit 57 (DEA Laboratory Report).

4. If called, Heather Hartshorn, an expert forensic chemist, would testify under oath and without dispute to the following: that she conducted chemical analysis of Government's Exhibit 58 (cocaine base purchased on 4-1-11) in a DEA Laboratory, and that this exhibit had not been opened prior to her analysis. Heather Hartshorn would further testify that Government's Exhibit 58 was Cocaine Base with a Gross Weight of 61.7 grams, which had a Net Weight of 29.8 grams and 7.0 grams, Concentration or Purity of 20.7% and 21.8%, an Amount of Actual Drug of 6.1 grams and 1.5 grams, and a Reserve Weight of 29.2 grams and 6.4 grams. Heather Hartshorn would further testify that Government's Exhibit 58 contained Phenacetin and Phenyltetrahydroimidazothiazole, which is also known as PT Hit. These findings are memorialized in Government's Exhibit 59. (DEA Laboratory Report).
5. The items displayed in Government's Exhibit 2024 (Photo taken at Unit A306 of opened suitcase containing drugs) and Government's Exhibit 2036 (Photo taken at Unit A306 of ziploc bags containing drugs) are the drugs analyzed by James McGill as represented in Government's Exhibit 14 (DEA Laboratory Report).
6. If re-called, James McGill, an expert forensic chemist, would testify under oath, and without dispute to the following: that he conducted chemical analysis of the item shown in Government's Exhibit 2065 (photo of bucket containing white substance inside trailer) in a DEA Laboratory, and that this exhibit had not been opened prior to his analysis. James McGill would further testify that the item displayed in Government's Exhibit 2065 contained no controlled substances, contained Phenacetin, had a gross weight of 5531 grams, and a net weight of 3021 grams.

SO STIPULATED:

Ronald C. Machen Jr.
United States Attorney

Dated: 11-1-2012 By: _____
Zia M. Faruqui
Debra L. Long-Doyle
Steven B. Wasserman
Assistant United States Attorneys

Dated: 11/1/12 _____
Eduardo Balarezo, Esq.
Attorney for Gezo Edwards

Dated: 11/1/2012 _____
Dwight Crawley, Esq.
Attorney for William Bowman

Dated: 11/1/2012 _____
Gregory Smith, Esq.
Attorney for Henry Williams

UNITED STATES DISTRICT COURT
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HENRY BRANDON WILLIAMS,	:	
	:	
Defendants.	:	

GOVERNMENT AND DEFENDANT'S STIPULATIONS REGARDING TESTIMONY ABOUT FINGERPRINT ANALYSIS

Defendants GEZO GEONG EDWARDS, WILLIAM MARTIN BOWMAN, and HENRY BRANDON WILLIAMS, their attorneys, Eduardo Balarezo, Dwight Crawley, and Gregory Smith and Assistant U.S. Attorneys Debra Long-Doyle, Steven Wasserman and Zia Faruqui, **STIPULATE** that:

1. If called, Aimee Qulia, an expert in fingerprint identification, comparison, and analysis, would testify under oath, and without dispute to the following:

- Aimee Qulia would further testify that she examined finger prints taken from 22 items seized from 9210 Rolling View Drive. Aimee Qulia would further testify that from these items, she found 13 fingerprints of defendant Gezo Edwards on a food processor (Government's Exhibit 37) and 1 fingerprint of defendant Gezo Edwards on a food processor lid. Aimee Qulia would further testify that no other items contained fingerprints of Defendant Gezo Edwards.

- Aimee Qulia would further testify that she examined finger prints taken from 11 items seized from Storage Unit A306. Aimee Qulia would further testify that from these items, she found 9 fingerprints of defendant William Bowman on a currency counter (Government's Exhibit 70), 1 fingerprint of defendant William Bowman on a currency counter box (Government's Exhibit 70), and 12 fingerprint of defendant William Bowman on a grey north face plastic bag (as shown in Government's Exhibit 35C). Aimee Qulia would further testify that no other items contained fingerprints of Defendant William Bowman.

SO STIPULATED:

Ronald C. Machen Jr.
United States Attorney

Dated: 11/1/2012 By: _____
Zia M. Faruqui
Debra L. Long-Doyle
Steven B. Wasserman
Assistant United States Attorneys

Dated: 11/1/12 _____
Eduardo Balarezo, Esq.
Attorney for Gezo Edwards

Dated: 11/1/12 _____
Dwight Crawley, Esq.
Attorney for William Bowman

Dated: 11-1-2012 _____
Gregory Smith, Esq.
Attorney for Henry Williams

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
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WILLIAM MARTIN BOWMAN, and	:	
HENRY BRANDON WILLIAMS,	:	
	:	
Defendants.	:	
	:	

STIPULATION

The parties, the United States, by and through Assistant United States Attorneys Steven B. Wasserman, Debra Long-Doyle and Zia Faruqui, and the Defendants Gezo Goeong Edwards, by and through his attorney, A. Eduardo Balarezo, and William Bowman, by and through his attorney Dwight Crawley, hereby stipulate and agree as follows:

1. That Special Agent Winifred Fleming of the Federal Bureau of Investigation (FBI) would testify that on April 25, 2011, she along with other members of law enforcement executed a search warrant for Unit A306 of the Public Storage Store located at 3005 Kenilworth Avenue, Hyattsville, Maryland. Agent Fleming would further testify that upon entering Unit A306, approximately 30 kilograms of cocaine was found inside a black in color hard-sided California suitcase along with dryer sheets, and that agents seized this cocaine and left the suitcase containing the dryer sheets inside the storage unit;

2. Agent Fleming would testify that during the execution of the search warrant on April 25, 2011, she observed items stored inside a plastic trash bag, which included two body armor vests, that were photographed as set forth in Government's Exhibits 2027, 2034 and 2035.

Agent Fleming would testify that in accordance with the instructions set forth in the search warrant issued on April 25, 2011, the two body armor vests were left inside Unit A306 on April 25, 2011. Agent Fleming would further testify that on April 26, 2011, the FBI obtained a second search warrant for Unit A306 at which time she seized several items of evidence, including the black in color hard-sided California suitcase which had contained the 30 kilograms of cocaine seized the previous evening, along with the two body armor vests which were originally located in a plastic trash bag inside the unit.

3. Agent Fleming would testify that during the execution of the search warrant on April 26, 2011, she placed the two body armor vests inside the black in color hard-sided California suitcase which already contained the dryer sheets in order to transport these items back to the Washington Field Office of the FBI. Agent Fleming would testify that on April 26, 2011, she filled out a Form FD-597, "Receipt for Property Received/Returned/Released/Seized," admitted as Defense Exhibit 19, documenting the items seized from Unit A306 on April 26, 2011.

4. Agent Fleming would testify that the purpose of the Form FD-597 is to document what items of evidence were seized, and not necessarily to identify the precise location of where the listed items were found.

Submitted by the parties,

Date: 11-13-12

Dwight Crawley
Attorney for Defendant Bowman

Date: 11/13/12

A. Eduardo Balarezo
Attorney for Defendant Edwards

Date: 11-13-12

Steven B. Wasserman
Debra Long-Doyle
Zia Faruqui
Assistant United States Attorneys

Instruction 2.107

BURDEN OF PROOF—PRESUMPTION OF INNOCENCE

Every defendant in a criminal case is presumed to be innocent. This presumption of innocence remains with the defendant throughout the trial unless and until the government has proven he is guilty beyond a reasonable doubt. This burden never shifts throughout the trial. The law does not require Mr. Edwards, Mr. Bowman, nor Mr. Williams to prove his innocence or to produce any evidence at all. If you find that the government has proven beyond a reasonable doubt every element of a particular offense with which each is charged, it is your duty to find him guilty of that offense. On the other hand, if you find the government has failed to prove any element of a particular offense beyond a reasonable doubt, it is your duty to find that defendant not guilty of that offense.

REASONABLE DOUBT

As I have said many times, the government has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the government's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the 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. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two types of evidence from which you may determine what the facts are in this case–direct evidence and circumstantial evidence. When a witness, such as an eyewitness, asserts actual knowledge of a fact, that witness's testimony is direct evidence. On the other hand, evidence of facts and circumstances from which reasonable inferences may be drawn is circumstantial evidence.

Let me give you an example. Assume a person looked out a window and saw that snow was falling. If he later testified in court about what he had seen, his testimony would be direct evidence that snow was falling at the time he saw it happen. Assume, however, that he looked out a window and saw no snow on the ground, and then went to sleep and saw snow on the ground after he woke up. His testimony about what he had seen would be circumstantial evidence that it had snowed while he was asleep.

The law says that both direct and circumstantial evidence are acceptable as a means of proving a fact. The law does not favor one form of evidence over another. It is for you to decide how much weight to give to any particular evidence, whether it is direct or circumstantial. You are permitted to give equal weight to both. Circumstantial evidence does not require a greater degree of certainty than direct evidence. In reaching a verdict in this case, you should consider all of the evidence presented, both direct and circumstantial.

Instruction 2.112

INADMISSIBLE AND STRICKEN EVIDENCE

The lawyers in this case sometimes objected when the other side asked a question, made an argument, or offered evidence that the objecting lawyer believed was not proper. You must not hold such objections against the lawyer who made them or the party s/he represents. It is the lawyers' responsibility to object to evidence that they believe is not admissible.

If, during the course of the trial, I sustained an objection to a lawyer's question, you should ignore the question, and you must not speculate as to what the answer would have been. If, after a witness answered a question, I ruled that the answer should be stricken, you should ignore both the question and the answer and they should play no part in your deliberations.

RECORDINGS OF INTERCEPTED CONVERSATIONS

Recordings of conversations identified by witnesses have been received into evidence. During the course of this trial, you have heard the phrase "wiretap" recording. A wire interception or wiretap is a court-ordered interception of communications which does not require the consent of the parties to the conversation. It is lawful to conduct court-authorized wiretaps even if the parties to the conversation have not consented to the taping.

CONSENSUAL TAPE RECORDING

During the course of this trial, you may have heard the phrase "consensual tape recording." This term should not be confused with the phrase wire interception or wiretap. A wire interception or wiretap is a court-ordered interception of communications which does not require the consent of the parties to the conversation. A consensual recording, on the other hand, is a recording where one party to the conversation consents to the conversation being recorded. It is lawful to conduct consensual recordings, and the other party or parties to the conversation do not have to consent to the taping. Consensual tape recorded conversations may occur over the telephone or face to face.

Instruction 2.310

TRANSCRIPTS OF TAPE RECORDINGS

Recordings of conversations identified by witnesses have been received in evidence. Transcripts of these recorded conversations are being furnished for your convenience and guidance as you listen to the tapes to clarify portions of the tape which are difficult to hear, and to help you identify speakers. The recordings, however, are the evidence in the case; the transcripts are not. If you notice any difference between the transcripts and the recordings, you must rely only on the recordings and not the transcripts. In addition, if you cannot determine from the recording that particular words were spoken, you must disregard the transcripts as far as those words are concerned.

REDACTED DOCUMENTS AND TAPES

During the course of this trial, a number of exhibits were admitted in evidence. Sometimes only those parts of an exhibit that are relevant to your deliberations were admitted. Where this has occurred, I have required the irrelevant parts of the statement to be blacked out or deleted. Thus, as you examine the exhibits, and you see or hear a statement where there appear to be omissions, you should consider only the portions that were admitted. You should not guess as to what has been taken out.

PHOTOGRAPHS OF THE DEFENDANT

PHOTOGRAPHS GENERALLY

You have heard evidence concerning photographs of the defendant. Law enforcement officers can obtain photographs of people in many different ways, such as from newspapers, school records and yearbooks, employers, driver's license files, and friends or members of a person's family. Therefore, simply because the law enforcement officers have obtained a person's picture does not mean that s/he has ever been arrested or charged with a crime.

Instruction 2.200

CREDIBILITY OF WITNESSES

In determining whether the government has proved the charges against the defendant beyond a reasonable doubt, you must consider the testimony of all the witnesses who have testified.

You are the sole judges of the credibility of the witnesses. You alone determine whether to believe any witness and the extent to which a witness should be believed. Judging a witness's credibility means evaluating whether the witness has testified truthfully and also whether the witness accurately observed, recalled, and described the matters about which the witness testified.

You may consider anything that in your judgment affects the credibility of any witness. For example, you may consider the demeanor and the behavior of the witness on the witness stand; the witness's manner of testifying; whether the witness impresses you as a truthful person; whether the witness impresses you as having an accurate memory and recollection; whether the witness has any motive for not telling the truth; whether the witness had a full opportunity to observe the matters about which he or she has testified; whether the witness has any interest in the outcome of this case, or friendship or hostility toward other people concerned with this case.

Inconsistencies or discrepancies in the testimony of a witness, or between

the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or transaction may see or hear it differently; an innocent mis-recollection, like a failure of recollection, is not an uncommon experience. In weighing the effect of the inconsistency or discrepancy, always consider whether it pertains to a matter of important or unimportant detail, and whether the inconsistency or discrepancy results from innocent error or intentional falsehood.

You may consider the reasonableness or unreasonableness, the probability or improbability, of the testimony of a witness in determining whether to accept it as true and accurate. You may consider whether the witness has been contradicted or supported by other credible evidence.

If you believe that any witness has shown him or herself to be biased or prejudiced, for or against either side in this trial, you may consider and determine whether such bias or prejudice has colored the testimony of the witness so as to affect the desire and capability of that witness to tell the truth.

You should give the testimony of each witness such weight as in your judgment it is fairly entitled to receive.

Instruction 2.215

EXPERT TESTIMONY

Ordinarily, a witness may not testify as to his or her opinions or conclusions. There is an exception for expert witnesses, who are allowed to give opinions, and the reasons for them because they have become expert in some art, science, profession, or calling.

In this case, the experts have testified as experts concerning various subjects. You are not bound by an expert's opinion. If you find that the opinion is not based on sufficient education or experience, that the reasons supporting the opinion are not sound, or that the opinion is outweighed by other evidence, you may completely or partially disregard the opinion. You should consider this evidence with all the other evidence in the case and give it as much weight as you think it fairly deserves.

Witnesses qualified by the Court as experts are the following:

- Special Agent John Bevington – the interpretation of words and phrases used by drug traffickers;
- Kitty Wong, DEA forensic analyst – chemical analysis;
- James McGill, DEA forensic analyst – the chemical analysis of controlled substances;
- Arnold Esposito, ATF expert – firearms examination;

- Detective Joseph Abdalla – distribution and use of cocaine; packaging of cocaine for wholesale and street-level distribution; wholesale, retail, and street value and prices of cocaine; manner in which cocaine dealers distribute cocaine; and Metropolitan Police Department and Drug Enforcement Administration procedures for the safeguarding of narcotics evidence.

Stipulations:

- Jennifer McKay and Heather Hartshorn, DEA forensic analysts – chemical analysis;
- Aimee Qulia – fingerprint identification, comparison, and analysis.

Instruction 2.207

POLICE OFFICER'S TESTIMONY

A law enforcement officer's testimony should be evaluated by you just as any other evidence in the case. In evaluating the officer's credibility, you should use the same guidelines that you apply to the testimony of any witness. In no event should you give either greater or lesser weight to the testimony of any witness merely because s/he is a law enforcement officer.

Instruction 2.305

STATEMENTS OF THE DEFENDANT—SUBSTANTIVE EVIDENCE

You have heard evidence that William Martin Bowman made statements to the police about the crime charged. You must decide how much weight to give the statement. For example, you may consider whether he made the statement voluntarily and understood what he was saying. You may consider whether he was forced, threatened, or pressured, either physically or psychologically, and whether he was promised any reward or benefit for making the statement. You may consider all of the conversations between him and the police. You may consider whether the police warned him of his rights. You may consider where and when the statement was given; the duration of any questioning; who was present during some or all of the questioning of the defendant. You may consider the age, education, experience, intelligence and the physical and mental condition of the defendant.

Instruction 2.308

EVIDENCE ADMITTED AGAINST ONE DEFENDANT ONLY

A statement made by William Bowman was admitted only against William Bowman, and it was not admitted against Gezo G. Edwards and Henry Brandon Williams. You may consider such evidence only with respect Mr. Bowman. You must not consider it in any way in your deliberations with respect to Mr. Edwards and Mr. Williams.

WITNESS WITH A PLEA AGREEMENT
ACCOMPLICE'S TESTIMONY

You have heard evidence that Willie Shawn Moorer, Omar Ismaeel, and Tracy Brooks entered into a plea agreement with the government pursuant to which Willie Shawn Moorer, Omar Ismaeel and Tracy Brooks agreed to testify truthfully in this case and the government agreed to dismiss a charge(s) against each of them and bring the cooperation of Willie Shawn Moorer, Omar Ismaeel, and Tracy Brooks to the attention of their sentencing judge and consider filing papers with that judge which would permit that judge to impose a more lenient sentence than that judge might otherwise be able to impose.

The government is permitted to enter into this kind of plea agreement. You, in turn, may accept the testimony of such a witness and convict the defendant on the basis of this testimony alone, if it convinces you of the defendant's guilt beyond a reasonable doubt. A witness who has entered into a plea agreement is under the same obligation to tell the truth as is any other witness; the plea agreement does not protect him against a prosecution for perjury or false statement, should he lie under oath.

However, you may consider whether a witness who has entered into such an agreement has an interest different from other types of witnesses. You may consider whether the plea agreement the witness entered into with the government has motivated him to testify falsely against the defendant. The testimony of a

witness who has entered into a plea agreement should be considered with caution.

In addition, the government is permitted to use a witness who testifies that he participated in the offense charged against the defendants, although the testimony of such a witness should be considered with caution. You should give the testimony as much weight as in your judgment it deserves.

Instruction 2.219

IMPEACHMENT BY PROOF OF PENDING SENTENCING—WITNESS

You have heard evidence that Willie Shawn Moorer, Omar Ismaeel, and Tracy Brooks are awaiting sentence. You may consider this evidence when deciding whether the witness has a bias in favor of one of the parties that may affect his willingness to tell the truth.

Instruction 2.208

RIGHT OF DEFENDANT NOT TO TESTIFY

Every defendant in a criminal case has an absolute right not to testify. Defendants Gezo G. Edwards, William Martin Bowman, and Henry Brandon Williams have chosen to exercise this right. You must not hold this decision against each of them, and it would be improper for you to speculate as to the reason or reasons for their decisions. You must not assume the defendants are guilty because they each chose not to testify.

Instruction 2.216

EVALUATION OF PRIOR INCONSISTENT STATEMENT OF A WITNESS

The law treats prior inconsistent statements differently depending on the circumstances in which they were made. I will now explain how you should evaluate those statements.

PART A ***(for use when prior statements not made under oath are introduced)*:**

You have heard evidence that Willie Shawn Moorer made a statement on an earlier occasion and that this statement may be inconsistent with his testimony here at trial. It is for you to decide whether the witness made such a statement and whether in fact it was inconsistent with the witness's testimony here. If you find such an inconsistency, you may consider the earlier statement in judging the credibility of the witness, but you may not consider it as evidence that what was said in the earlier statement was true.

PART B ***(for use when prior statements made under oath are introduced)*:**

You also have heard evidence that Willie Shawn Moorer testified in the grand jury under oath, subject to the penalty of perjury, and that this statement may be inconsistent with his testimony here at trial. If you find that the earlier statement is inconsistent with the witness's testimony here in court, you may consider this inconsistency in judging the credibility of the witness. However, unlike statements not made under oath, you also may consider this earlier

statement as evidence that what was said in the earlier statement was true.

Instruction 2.218

IMPEACHMENT BY PROOF OF CONVICTION OF A CRIME--WITNESS

You have heard evidence that Willie Shawn Moorer has been convicted of crimes. You may consider these convictions only in evaluating the credibility of that witness's testimony in this case.

Instruction 2.106

INDICTMENT NOT EVIDENCE

The Indictment is merely the formal way of accusing a person of a crime. You must not consider the indictment as evidence of any kind–you may not consider it as any evidence of each of the defendant's guilt or draw any inference of guilt from it.

Instruction 2.110

NATURE OF CHARGES NOT TO BE CONSIDERED

One of the questions you were asked when we were selecting this jury was whether the nature of the charge itself would affect your ability to reach a fair and impartial verdict. We asked you that question because you must not allow the nature of a charge to affect your verdict. You must consider only the evidence that has been presented in this case in reaching a fair and impartial verdict.

PART TWO

Ladies and Gentlemen, I would now like to talk with you about the specific offenses charged in this case.

CHARGES

Defendants Gezo G. Edwards, William Martin Bowman, and Henry Brandon Williams, have been charged with the following offenses:

A. Conspiracy to Distribute and Possess with the Intent to Distribute Five Kilograms or More of Cocaine:

1. From in or about **January 2009, through at least April 26, 2011**, as to:
   a) ***Gezo G. Edwards***
   b) ***William Martin Bowman***
   c) ***Henry Brandon Williams***

B. Distribution of Cocaine (three counts):

1. On or about **October 22, 2010**, as to ***William Martin Bowman***
2. On or about **October 27, 2010**, as to ***William Martin Bowman***
3. On or about **November 10, 2010**, as to ***William Martin Bowman***.

C. Carrying, and Possessing a Firearm During a Drug Trafficking Offense:

1. On or about **April 25, 2011**, as to ***Gezo G. Edwards***:
   a) *.40 Caliber Glock Pistol*
   b) *AR15 Bushmaster Semi-automatic Assault Rifle.*

2. On or about **April 25, 2011**, as to ***William Martin Bowman***:
   a) *.40 Caliber Glock Pistol*
   b) *AR15 Bushmaster Semi-automatic Assault Rifle.*

3. On or about **April 26, 2011**, as to ***William Martin Bowman***:
   a) *.40 Caliber Sig Sauer Pistol.*

"ON OR ABOUT"—PROOF OF

The indictment charges that the offense of

1. Conspiracy to distribute and possess with the intent to distribute substances containing a detectable amount of cocaine, and the amount was 5 kilograms of cocaine was committed "on or about" January 2009 and continuing through at least April 26, 2011;
2. Unlawful distribution of cocaine was committed "on or about" October 22, 2010;
3. Unlawful distribution of cocaine was committed "on or about" October 27, 2010;
4. Unlawful distribution of cocaine was committed "on or about" November 10, 2010;
5. Carrying and possessing a firearm during a drug trafficking offense was committed "on or about" April 25, 2011, and "on or about" April 26, 2011.

The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE

I am going to tell you about the charge of conspiracy to distribute and possess with the intent to distribute the controlled substance, cocaine.

Defendants Gezo G. Edwards, William Martin Bowman and Henry Brandon Williams are each charged with conspiring to distribute and to possess with the intent to distribute 5 kilograms or more of a quantity of a mixture or substance containing a detectable amount of cocaine. It is against the law to agree with someone to commit the crime of distribution and possession with the intent to distribute a controlled substance. To find the defendant guilty of the crime of conspiracy, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

The charge of conspiracy to distribute and possess with the intent to distribute cocaine, is a separate charge from distribution of cocaine itself with which William Bowman also is charged. You must consider each defendant separately in deciding whether the government has proved each of the elements as to that person.

The elements of distribution of a controlled substance, each of which the government must prove beyond a reasonable doubt, are that:

1. The defendant distributed a detectable amount of a controlled substance; and
2. He did so voluntarily and on purpose, not by mistake or accident.

"Distribute" means to transfer or attempt to transfer to another person. The

government need not prove that the defendant received or expected to receive anything of value in return.

The law makes cocaine a controlled substance. In order to decide whether the material was cocaine, you may consider all evidence that may help you, including exhibits, expert and non-expert testimony.

The elements of possession with intent to distribute a controlled substance, each of which the government must prove beyond a reasonable doubt, are that:

1. The defendant possessed a detectable amount of a controlled substance; and

2. He did so voluntarily and on purpose, not by mistake or accident.

3. When he did so, he intended to distribute, that is transfer to another person, the controlled substance. The government need not prove that the defendant received or expected to receive anything of value in return.

The law makes cocaine a controlled substance. In order to decide whether the material was cocaine, you may consider all evidence that may help you, including exhibits, expert and non-expert testimony.

The government is not required to prove that the objective was achieved. The elements of conspiracy, each of which the government must prove beyond a reasonable doubt, are that:

First, that from in or about January 2009, the exact date being unknown and continuing through at least April 26, 2011, an agreement existed between two or more people to distribute and possess with the intent to distribute a controlled

substance. This does not have to be a formal agreement or plan in which everyone involved sat down together and worked out the details. On the other hand, merely because people get together and talk about common interests, or do similar things, does not necessarily show that an agreement exists to distribute and possess with the intent to distribute a controlled substance. It is enough that the government prove beyond a reasonable doubt that there was a common understanding among those who were involved to commit the crime of distribution and possession with the intent to distribute a controlled substance. So, the first thing that must be shown is the existence of an agreement.

Second, the government must prove that each defendant intentionally joined in that agreement. It is not necessary to find he agreed to all the details of the crime, or that he knew the identity of all the other people the government has claimed were participating in the agreement. A person may become a member of a conspiracy even if that person agrees to play only a minor part, as long as that person understands the unlawful nature of the plan and voluntarily, knowingly and intentionally joins in it with the intent to advance or further the unlawful object of the conspiracy. Even if the defendant was not part of the agreement at the very start, he can become a member of a conspiracy later if the government proves that he intentionally joined the agreement. Different people may become part of the conspiracy at different times.

However, mere presence at the scene of the agreement or of the crime, or merely being with the other participants, does not show that the defendant knowingly joined in the agreement. Also, unknowingly acting in a way that helps the participants, or merely knowing about the agreement itself, without more, does not make the defendant part of the conspiracy. A simple buyer-seller relationship alone also does not make out a conspiracy. A buyer-seller relationship may be sufficient if it is coupled with other evidence indicating a common purpose, such as an ongoing or continuing relationship, multiple sales, sales on credit or fronting and an awareness that the narcotics purchased by the buyer are to be resold, or knowledge of a broader illegal venture. Additionally, where the quantity involved is sufficiently large, an inference may be drawn if the jury wishes to do so, that an implicit agreement exists for one defendant to supply another defendant with narcotics for resale on an ongoing basis.

So the second thing that must be shown is that the defendant was a part of the conspiracy.

A conspiracy can be proved indirectly by facts and circumstances which lead to a conclusion that a conspiracy existed. Nonetheless, the government must prove that such facts and circumstances existed and that they lead to that conclusion that a conspiracy existed in this particular case.

In determining whether a conspiracy between two or more persons existed

and whether each defendant was one of its members, you may consider the acts and statements of any other members of the conspiracy as evidence against all of the defendants whether done in or out of their presence while the conspiracy existed. When persons enter into an agreement to commit a crime, they become agents for each other so that everything which is said or done by one of them in furtherance of that purpose is deemed to be the act or statement of all who have joined in that conspiracy and is evidence against all of the conspirators. However, statements of any conspirator which are made before its existence or after its termination may be considered as evidence only against the person making the statements.

In summary, a conspiracy is a kind of partnership in crime. For any defendant to be convicted of the crime of conspiracy, the government must prove two things beyond a reasonable doubt: first, that from on or about January 2009 through April 26, 2011, there was an agreement to distribute and possess with intent to distribute; and second, that the defendant intentionally and knowingly joined in that agreement.

Finally, the law makes cocaine a controlled or illegal substance. The law does not, however, require the government to prove an overt act in furtherance of the conspiracy to convict either of the three defendants of this offense.

The specific amount of any controlled substance involved is not an element

of the offense of conspiracy. However, if you find the defendants guilty of the offense of conspiracy to distribute and possess with intent to distribute a controlled substance as charged in the Indictment, you must then determine whether the government proved that the quantity of the controlled substance was 5 kilograms or more of a mixture or substance containing a detectable amount of cocaine.

As I told you earlier, the government is required to prove beyond a reasonable doubt, with respect to any defendant found guilty of Count One, a threshold amount, if any, of controlled substances involved in the conspiracy and the amount, if any is so alleged, of controlled substances for which each defendant is responsible. On these issues, you will have to record your findings. First, with respect to any defendant for whom you return a guilty verdict on Count One, you must make a determination as to the quantity, if any, of the controlled substance for which each defendant is responsible. You will be asked to complete a verdict form specifying whether the government has proven beyond a reasonable doubt that the defendant conspired to distribute and/or possess with the intent to distribute a certain quantity of cocaine. The verdict form also will ask you to decide whether the amount of cocaine was:

1. 5 kilograms or more of mixtures and substances containing a detectable amount of cocaine. Your decision regarding the quantity of cocaine for which each individual defendant is responsible, must be unanimous.

Only with respect to Defendant Henry Brandon Williams:

2. If you are unable to find unanimously that the amount of cocaine for which **Defendant Williams** is responsible is 5 kilograms or more, then you should consider whether the drug quantity was:

3. 500 grams or more of mixtures and substances containing a detectable amount of cocaine. If you are unable to find unanimously that the amount of cocaine was 500 grams or more, then you should consider whether the drug quantity was:

4. Less than 500 grams of mixtures and substances containing a detectable amount of cocaine.

In determining quantity, you must determine the total weight of any mixture and substance that contains a detectable amount of cocaine. It is the entire weight of the mixture and substance that controls your determination.

In making the determination of drug quantities for each defendant, you are instructed that a defendant is responsible for those drugs that he agreed would be distributed and/or possessed with intent to distribute, and those drug amounts distributed and/or possessed with intent to distribute by other coconspirators which the defendant **reasonably could have foreseen** would be distributed or possessed with the intent to distribute in furtherance of the conspiracy. In other words, the government is not required to prove that the defendants personally distributed or

possessed with the intent to distribute 5 kilograms or more of cocaine: a defendant is responsible for not only his own actions but also for the actions of his coconspirators if those actions were known or reasonably foreseeable to the defendant. Thus, for example, you may count for purposes of this element amounts of cocaine sold by the defendant, and amounts of cocaine that the defendant could reasonably foresee would be distributed and/or possessed with the intent to distribute and sold by all of his coconspirators during the course of the conspiracy. In calculating drug quantities, you may rely on direct as well as circumstantial evidence, and you may rely on the testimony of any witness on this issue. I further instruct you that the government is not required to have seized or physically produced the controlled substances.

WHERE THE GOVERNMENT ALLEGES JOINT ACTUAL OR CONSTRUCTIVE POSSESSION

(***Possession as it relates to the conspiracy charge*** - Defendants Gezo G. Edwards, William Martin Bowman, and Henry Brandon Williams)

Possession means to have physical possession or to otherwise exercise control over tangible property. A person may possess property in either of two ways. First, the person may have physical possession of it by holding it in his hand or by carrying it in or on his body or person. This is called "actual possession." Second, a person may exercise control over property not in his or her physical possession if that person has both the power and the intent at a given time to control the property. This is called "constructive possession."

In addition, the law recognizes the possibility that two or more individuals can jointly have property in their constructive possession. Two or more persons have property in their joint constructive possession when they each have both the power and the intent at a given time to control the property.

Mere presence near something or mere knowledge of location, however, is not enough to show possession. To prove possession of cocaine against Defendants Gezo G. Edwards, William Martin Bowman, and Henry Brandon Williams in this case, the government must prove beyond a reasonable doubt that they had either actual or constructive possession of it.

DISTRIBUTION OF A CONTROLLED SUBSTANCE

This instruction applies to the charges against William Martin Bowman alleged to have taken place on October 22, 2010; October 27, 2010; and November 10, 2010.

The elements of distribution of a controlled substance, each of which the government must prove beyond a reasonable doubt, are that:

1. William Martin Bowman distributed a detectable amount of a controlled substance, cocaine; and

2. He did so voluntarily and on purpose, not by mistake or accident.

"Distribute" means to transfer or attempt to transfer to another person. The government need not prove that the defendant received or expected to receive anything of value in return. The law makes cocaine a controlled substance. In order to decide whether the material was cocaine, you may consider all evidence that may help you, including exhibits, expert and non-expert testimony.

CARRYING AND POSSESSING A FIREARM DURING A DRUG TRAFFICKING OFFENSE

Defendants Gezo G. Edwards and William Martin Bowman are charged with carrying a firearm during and in relation to and possessing a firearm in furtherance of the crime of conspiracy to distribute and possess with intent to distribute mixtures and substances containing a detectable amount of cocaine, as charged in Count One of the Indictment. It is against federal law to carry or possess a firearm during and in relation to and/or in furtherance of a drug trafficking offense. For you to find Defendants Edwards and Bowman guilty of this crime, you must be satisfied that the government has proven each of the following things beyond a reasonable doubt:

First, Defendants Edwards and Bowman committed the crime of conspiracy to distribute and possess with the intent to distribute mixtures and substances containing a detectable amount of cocaine, described in Count One of the Indictment; and

Second, Defendants Edwards and Bowman knowingly possessed or carried a firearm during and in relation to and/or in furtherance of the commission of that crime.

The word "knowingly" means that an act was done voluntarily and intentionally, not because of mistake or accident.

To "carry" a firearm means to move or transport the firearm on one's person

or in a vehicle or container. It need not be immediately accessible. For carry to be "during and in relation to" a crime, the firearm must have played a role in the crime or must have been intended by the defendant to play a role in the crime. That need not have been its only purpose, however.

A defendant possesses a firearm "in furtherance of" a crime if the firearm's possession made the commission of the underlying crime easier, safer or faster, or in any other way helped the defendant commit the crime. There must be some connection between the firearm and the underlying crime, but the firearm need not have been actively used during the crime.

Possession means to exercise control over tangible property. A person may exercise control over property not in his physical possession if that person has both the power and the intent at a given time to control the property. This is called "constructive possession."

In addition, the law recognizes the possibility that two or more individuals can jointly have property in their constructive possession. Two or more persons have property in their joint constructive possession when they each have both the power and the intent at a given time to control the property.

Mere presence near something or mere knowledge of location, however, is not enough to show possession. To prove possession of the ***.40 Caliber Glock Pistol*** against Gezo G. Edwards in this case, the government must prove beyond a

reasonable doubt that Mr. Edwards had constructive possession of it. To prove possession of the ***AR15 Bushmaster Semi-automatic Assault Rifle*** against Gezo G. Edwards, the government must prove beyond a reasonable doubt that Mr. Edwards had constructive possession of it. Likewise, to prove possession of the ***.40 Caliber Glock Pistol*** against William Martin Bowman in this case, the government must prove beyond a reasonable doubt that Mr. Bowman had actual or constructive possession of it. To prove possession of the ***AR15 Bushmaster Semi-automatic Assault Rifle*** against William Martin Bowman in this case, the government must prove beyond a reasonable doubt that Mr. Bowman had constructive possession of it. Finally, to prove possession of the ***.40 Caliber Sig Sauer Pistol*** against William Martin Bowman in this case, the government must prove beyond a reasonable doubt that Mr. Bowman had constructive possession of it.

Instruction 3.101

PROOF OF STATE OF MIND

Someone's intent and/or knowledge ordinarily cannot be proved directly, because there is no way of knowing what a person is actually thinking, but you may infer someone's intent or knowledge from the surrounding circumstances. You may consider any statement made or acts done or omitted by each of the defendants, and all other facts and circumstances received in evidence which indicate his intent and/or knowledge.

You may infer, but are not required to infer, that a person intends the natural and probable consequences of acts he intentionally did or did not do. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial. You should consider all the circumstances in evidence that you think are relevant in determining whether the government has proved beyond a reasonable doubt that each defendant acted with the necessary state of mind.

PART THREE

Instruction 2.502

SELECTION OF FOREPERSON

When you return to the jury room, you should first select a foreperson to preside over your deliberations and to be your spokesperson here in court. There are no specific rules regarding how you should select a foreperson. That is up to you. However, as you go about the task, be mindful of your mission–to reach a fair and just verdict based on the evidence. Consider selecting a foreperson who will be able to facilitate your discussions, who can help you organize the evidence, who will encourage civility and mutual respect among all of you, who will invite each juror to speak up regarding his or her views about the evidence, and who will promote a full and fair consideration of that evidence.

Instruction 2.510

ATTITUDE AND CONDUCT OF JURORS IN DELIBERATIONS

The attitude and conduct of jurors at the beginning of their deliberations are matters of considerable importance. It may not be useful for a juror, upon entering the jury room, to voice a strong expression of an opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, a sense of pride may cause that juror to hesitate to back away from an announced position after a discussion of the case. Furthermore, many juries find it useful to avoid an initial vote upon retiring to the jury room. Calmly reviewing and discussing the case at the beginning of deliberations is often a more useful way to proceed. Remember that you are not partisans or advocates in this matter, but you are judges of the facts.

Instruction 2.405

UNANIMITY–GENERAL

A verdict must represent the considered judgment of each juror, and in order to return a verdict, each juror must agree on the verdict. In other words, your verdict(s) must be unanimous.

Instruction 2.505

POSSIBLE PUNISHMENT NOT RELEVANT

The question of possible punishment of the defendant in the event a conviction is not a concern of yours and should not enter into or influence your deliberations in any way. The duty of imposing sentence in the event of a conviction rests exclusively with me. Your verdict should be based solely on the evidence in this case, and you should not consider the matter of punishment at all.

Instruction 2.404

MULTIPLE DEFENDANTS--MULTIPLE COUNTS

Each count of the indictment charges a separate offense. Moreover, each defendant is entitled to have the issue of his guilt as to each of the crimes for which he is on trial determined from his own conduct and from the evidence that applies to him as if he were being tried alone. You should, therefore, consider separately each offense, and the evidence which applies to it, and you should return separate verdicts as to each count of the indictment, as well as to each defendant, unless I specifically instruct you to do otherwise, such as with respect to the offense of carrying and possessing a firearm during a drug trafficking offense.

The fact that you may find any one defendant guilty or not guilty on any one count of the indictment should not influence your verdict with respect to any other count of the indictment for that defendant. Nor should it influence your verdict with respect to any other defendant as to that count or any other count in the indictment. Thus, you may find any one or more of the defendants guilty or not guilty on any one or more counts of the indictment, and you may return different verdicts as to different defendants and as to different counts. At any time during your deliberations you may return your verdict of guilty or not guilty with respect to any defendant on any count.

Instruction 2.509

COMMUNICATIONS BETWEEN COURT AND JURY DURING JURY'S DELIBERATIONS

If it becomes necessary during your deliberations to communicate with me, you may send a note by the clerk or marshal, signed by your foreperson or by one or more members of the jury. No member of the jury should try to communicate with me except by such a signed note, and I will never communicate with any member of the jury on any matter concerning the merits of this case, except in writing or orally here in open court.

Bear in mind also that you are never, under any circumstances, to reveal to any person—not the clerk, the marshal or me—how jurors are voting until after you have reached a unanimous verdict. This means that you should never tell me, in writing or in open court, how the jury is divided on any matter—for example, 6-6 or 7-5 or 11-1, or in any other fashion—whether the vote is for conviction or acquittal or on any other issue in the case.

Instruction 2.501

EXHIBITS DURING DELIBERATIONS

You may examine any or all of the exhibits that have been admitted into evidence as you consider your verdict(s). Please keep in mind that exhibits that were only marked for identification but were not admitted into evidence will not be given to you to examine or consider in reaching your verdict. I will be sending into the jury room with you the paper and photographic exhibits that have been admitted into evidence. I will also be sending into the jury room with you the video recordings, and equipment on which you can view the video recordings.

If you wish to examine the weapon(s), ammunition, drugs, other contraband, please notify the clerk by a written note, and the marshal will bring them to you. For security purposes, the marshal will remain in the jury room while each of you has the opportunity to examine this evidence. You should not discuss the evidence or otherwise discuss the case among yourselves while the marshal is present in the jury room. You may ask to examine this evidence as often as you find it necessary.

If you wish to examine the large physical exhibits, please notify the clerk by a written note, and we will make the exhibits available for you to examine in the Courtroom. You should not discuss the evidence or otherwise discuss the case among yourselves while in the Courtroom. You may ask to examine this evidence

as often as you find it necessary.

If you wish to hear those portions of recordings which I have admitted into evidence, please notify the clerk by a written note and we will provide you with the audio recordings, transcripts, and equipment on which you can listen to the recordings. When you have finished listening to the recordings, please notify the clerk by a written note, and we will retrieve the recordings and the transcripts. You may ask to listen to the audio recordings as often as you find it necessary.

Instruction 2.100

FURNISHING THE JURY WITH A COPY OF THE INSTRUCTIONS

I will provide you with a copy of my instructions. During your deliberations, you may, if you want, refer to these instructions. While you may refer to any particular portion of the instructions, you are to consider the instructions as a whole and you may not follow some and ignore others. If you have any questions about the instructions, you should feel free to send me a note. Please return your instructions to me when your verdict is rendered.

Instruction 2.407

VERDICT FORM EXPLANATION

You will be provided with a Verdict Form for use when you have concluded your deliberations. The form is not evidence in this case, and nothing in it should be taken to suggest or convey any opinion by me as to what the verdict should be. Nothing in the form replaces the instructions of law I have already given you, and nothing in it replaces or modifies the instructions about the elements which the government must prove beyond a reasonable doubt. The form is meant only to assist you in recording your verdict.

USE OF ELECTRONIC TECHNOLOGY TO CONDUCT RESEARCH ON OR COMMUNICATE ABOUT A CASE

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, Blackberry or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by

you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

I hope that for all of you this case is interesting and noteworthy.

Instruction 2.511

EXCUSING ALTERNATE JURORS

The last thing I must do before you begin your deliberations is to excuse the alternate jurors. As I told you before, the selection of alternates was an entirely random process; it's nothing personal. We selected four seats to be the alternate seats before any of you entered the courtroom. Since the rest of you have remained healthy and attentive, I can now excuse those jurors in seats six, seven, and nine.

Before you four leave, I am going to ask you to tear out a page from your notebook, and to write down your name and daytime phone number and hand this to the clerk. I do this because it is possible, though unlikely, that we will need to summon you back to rejoin the jury in case something happens to a regular juror. Since that possibility exists, I am also going to instruct you not to discuss the case with anyone until we call you. My earlier instruction on use of the Internet still applies; do not research this case or communicate about it on the Internet. In all likelihood, we will be calling you to tell you there has been a verdict and you are now free to discuss the case; there is, however, the small chance that we will need to bring you back on to the jury. Thank you very much for your service, and please report back to the jury office to turn in your badge on your way out.

Instruction 2.602

INSTRUCTIONS TO JURY BEFORE POLLING

I am going to ask each of you, by seat number, if you agree with the verdict(s) as stated by your foreperson. We do this to make sure your verdict(s) are unanimous. If you agree with the verdict, simply say "yes" when I call your seat number. If you disagree with any of the verdicts, simply say "no" when I call your seat number.