

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Case No. XX-cr-XXXX-CMA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

_____ ,

Defendant.

FINAL JURY INSTRUCTIONS

INSTRUCTION NO. 1
INTRODUCTION TO FINAL INSTRUCTIONS

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges, you are the other. I am the judge of the law. You, as jurors, are the judges of the facts. I presided over the trial and decided what evidence was proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

In explaining the rules of law that you must follow, first, I will give you some general instructions that apply in every criminal case – for example, instructions about burden of proof and insights that may help you to judge the believability of witnesses. Then I will give you some specific rules of law that apply to this particular case. Finally, I will explain the procedures you should follow in your deliberations and the possible verdicts you may return. You will be allowed to take these instructions with you to the jury deliberation room, so you need not take notes as I read them to you.

INSTRUCTION NO. 2
PURPOSE OF JURY AND DUTY TO FOLLOW
INSTRUCTIONS

You are here to decide whether the Government has proved beyond a reasonable doubt that Mr./Ms. _____ is guilty of the crime(s) charged. Mr./Ms. _____ is 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(s) 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 this defendant has been proved guilty of the crime(s) charged.

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

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences. However, you should not read into these instructions, or anything else I may have said or done, any suggestion as to what your verdict should be. That is entirely up to you.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took.

INSTRUCTION NO. 3
All Persons Equal Before the Law—Implicit Bias

You should consider and decide this case as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. Corporations and governmental agencies are entitled to the same fair trial as a private individual. All persons, including corporations, governmental agencies, and other organizations stand equal before the law, and are to be treated as equals. You should not be influenced by who the parties are, or who the witnesses are, i.e., whether they are rich or poor, young or old, well-educated or not.

You also should be aware of the natural human tendency to look at others, and to filter what they have to say, through the lens of our own personal experience and background. Because we all do this, we often see life – and evaluate evidence – in a way that tends to favor people who are like ourselves or who have had life experiences like our own. In deciding this case, I urge you to be aware of this natural human tendency to stereotype other people and to make assumptions about them based on the stereotypes, and I urge you to avoid such stereotyping.

**INSTRUCTION NO. 4
PRESUMPTION OF INNOCENCE, BURDEN OF PROOF,
AND REASONABLE DOUBT**

The Court instructs you that you must presume Mr./Ms. _____ to be innocent of the crime(s) charged. Thus, Mr./Ms. _____, although accused of (a) crime(s) in the indictment, begins the trial with a “clean slate” – with no evidence against him. The law permits the jury to consider only legal evidence presented in court. The indictment or formal charge against Mr./Ms. _____ is not evidence of guilt. In fact it is not evidence of any kind.

The Government has the burden of proving Mr./Ms. _____ guilty beyond a reasonable doubt. Unless the Government proves, beyond a reasonable doubt, that Mr./Ms. _____ has committed each and every element of the offense(s) charged in the indictment, you must find him not guilty of that/those offense(s) not proven. This burden never shifts to Mr./Ms. _____ because the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses, producing any evidence, or even cross-examining the Government’s witnesses.

Although the Government’s burden of proof is a strict and heavy burden, proof beyond a reasonable doubt does not mean proof beyond all possible doubt. There are very few things in this world that we know with absolute certainty. The test is one of reasonable doubt. A “reasonable doubt” is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Reasonable doubt may arise from the evidence, the lack of evidence, or the nature of the evidence. It is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof which is so convincing that a reasonable person would not hesitate to rely and act upon it in making the most important decisions in his/her own life.

**INSTRUCTION NO. 5
EVIDENCE – DEFINED**

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

The evidence in this case includes only what the witnesses said while they were testifying under oath, the exhibits that I allowed into evidence, and the stipulations that the lawyers or parties agreed to.

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. My comments and questions are not evidence.

During the trial, I did not let you hear the answers to some of the questions that the lawyers or parties asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. I may have ordered you to disregard things that you saw or heard, or I may have stricken evidence 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. 6
STIPULATED FACT**

The parties have stipulated to the following fact(s):

Prior to _____, Mr./Ms. _____, had been convicted of a crime punishable by imprisonment for a term exceeding one year and which constitutes a "crime of violence."

Because the parties have stipulated to this/these fact(s), you are to take this/these fact(s) as true without further proof.

INSTRUCTION NO. 7
EVIDENCE – DIRECT AND CIRCUMSTANTIAL – 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.

Although 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. Inferences are conclusions that reason and common sense lead you to draw from the facts established by the evidence in the case.

INSTRUCTION NO. 8 CREDIBILITY OF WITNESSES

I remind you that it is your job to decide whether the Government has proved the guilt of Mr./Ms. _____ beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to the witness’s testimony. An important part of your job will be making judgments about the testimony of the witnesses, [including Defendant], who testified in this case.

You should think about the testimony of each witness, [including Defendant], you have heard and decide whether you believe all or any part of what each witness had to say, and how important that testimony was. In making that decision, I suggest that you ask yourself a few questions:

Did the witness impress you as honest?

Did the witness have any particular reason not to tell the truth?

Did the witness have a personal interest in the outcome in this case?

Did the witness have any relationship with either the Government or the defense?

Did the witness seem to have a good memory?

Did the witness clearly see or hear the things about which he/she testified?

Did the witness have the opportunity and ability to understand the questions clearly and answer them directly?

Did the witness's testimony differ from the testimony of other witnesses?

[You should weigh the testimony and evaluate the credibility of Defendant in the same way as that of any other witness.]

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

In reaching a conclusion on a particular point, or ultimately in reaching a verdict in this case, do not make any decisions simply because there were more witnesses on one side than on the other.

INSTRUCTION NO. 9
EXPERT WITNESS OPINION EVIDENCE

The rules of evidence ordinarily do not permit witnesses to testify as to their own opinions or their own conclusions about important questions in a trial. An exception to this rule exists as to those persons who are described as “expert witnesses”. An “expert witness” is someone who, by education or by experience, may have become knowledgeable in some technical, scientific, or very specialized area. If such knowledge or experience may be of assistance to you in understanding some of the evidence or in determining a fact, an “expert witness” in that area may state an opinion as to a matter in which he or she claims to be an expert.

You should consider each expert opinion received in evidence in this case and give it such weight, if any, as you may think it deserves. You should consider the testimony of expert witnesses just as you consider other evidence in this case. If you should decide that the opinion of an expert witness is not based upon sufficient education or experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you should conclude that the opinion is outweighed by other evidence, you may disregard the opinion in part or in its entirety.

As I have told you several times, you - the jury - are the sole judges of the facts of this case.

INSTRUCTION NO. 10
NON-TESTIFYING DEFENDANT

Mr./Ms. _____ did not testify and I remind you that you cannot consider his 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. That is a constitutional right in this country, it is 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.

INSTRUCTION NO. 11
STATEMENTS BY DEFENDANT

Evidence has been presented about statements attributed to Mr./Ms. _____ alleged to have been made after the commission of the crimes charged in this case. Such evidence should be considered by you with caution and weighed with care. You should give each statement the weight you think it deserves, after considering all the circumstances under which the statement was made. If you determine that the statement is unreliable or not credible, you may disregard the statement entirely.

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 all the other circumstances in evidence surrounding the making of the statement.

INSTRUCTION NO. 12
JURY'S RECOLLECTION CONTROLS

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

INSTRUCTION NO. 13
SPECIAL INVESTIGATIVE TECHNIQUES NOT REQUIRED

During the trial, you have heard testimony of witnesses and argument by counsel that the Government did not utilize specific investigative techniques. You may consider these facts in deciding whether the Government has met its burden of proof, because as I told you, you should look to all of the evidence or lack of evidence in deciding whether a defendant is guilty. However, you also are instructed that there is no legal requirement that the Government use any specific investigative techniques to prove its case. There is no requirement to attempt to take fingerprints, or that it offer fingerprints in evidence. Law enforcement techniques are not your concern.

I am sure that at least one of you has seen the popular TV shows, CSI, or Law & Order. The TV standards, and the capabilities of law enforcement as portrayed on TV and in the movies, do not apply here to this trial. Witness testimony is sufficient to establish the charges in this case. Specific investigative techniques, such as DNA and fingerprints, are not required to be presented in order for you to find Mr./Ms.

_____ guilty of the charges in this case. Please dismiss from your deliberations in consideration of the appropriate verdict in this case, any investigative techniques which you may have seen on TV or in the movies, as well as anything else about which there was no evidence.

Your concern, as I have said, is to determine whether or not, on the evidence or lack of evidence, Mr./Ms. _____'s guilt has been proved beyond a reasonable doubt.

INSTRUCTION NO. 14
TRANSCRIPT OF RECORDED CONVERSATION

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 of those recorded conversations.

Keep in mind that the transcripts are not evidence. They were 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, 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 transcript as far as those parts are concerned.

INSTRUCTION NO. 15
CAUTION – PUNISHMENT

If you find Mr./Ms. _____ guilty, it will be my duty to decide what the punishment will be. You should not discuss or consider the possible punishment in any way while deciding your verdict.

INSTRUCTION NO. 16
THE INDICTMENT IS NOT EVIDENCE

An indictment is only a formal method used by the Government to accuse a defendant of a crime. It is not evidence of any kind against Mr./Ms. _____.
Mr./Ms. _____ is presumed to be innocent of the crime charged. Even though this indictment has been returned against Mr./Ms. _____, s/he begins this trial with absolutely no evidence against him/her.

_____ has pleaded "Not Guilty" to this indictment and, therefore, denies that s/he is guilty of the charges.

INSTRUCTION NO. 17
CONSIDER EACH COUNT SEPARATELY

A separate crime is charged in each count of the indictment. Each charge, and the evidence pertaining to it, should be considered separately by the jury.

INSTRUCTION NO. 18
“ON OR ABOUT”

The indictment charges that crimes were committed “on or about” certain dates. The Government must prove beyond a reasonable doubt that Mr./Ms. _____ committed each crime reasonably near these dates.

INSTRUCTION NO. 19
USE OF CONJUNCTIVE – DISJUNCTIVE

One or more counts of the indictment may accuse Mr./Ms. _____ of violating the same statute in more than one way. In other words, the indictment may allege that the statute in question was violated by various acts which are in the indictment joined by the conjunctive “and,” while the statute and the elements of the offense are stated in the disjunctive, using the word “or.” In these instances, it is sufficient for a finding of guilt if the evidence established beyond a reasonable doubt the violation of the statute by any one of the acts charged. In order for you to return a guilty verdict, however, all twelve of you must agree that the same act has been proven.

INSTRUCTION NO. 20
COUNT ONE: POSSESSION OF A FIREARM BY A CONVICTED FELON

Count One of the indictment charges that on or about _____, in the District of Colorado, Defendant _____, a convicted felon, did knowingly possess in and affecting interstate commerce, firearms, and ammunition, all in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(1)(B).

Sections 922(g)(1) and 924(a)(1)(B) of Title 18 of the United States Code provide, in part, that:

“It shall be unlawful for any person—

. . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to . . . knowingly . . . possess in or affecting commerce, any firearm or ammunition. . . .”

These laws make 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 commerce.

To find Mr./Ms. _____ guilty of this crime you must be convinced that the Government has proved each of the following beyond a reasonable doubt:

First: Mr./Ms. _____ knowingly possessed a firearm or ammunition;

Second: Mr./Ms. _____ was convicted of a felony, that is, a crime punishable by imprisonment for a term exceeding one year, before s/he possessed the firearm or ammunition; and

Third: before Mr./Ms. _____ possessed the firearm or ammunition, the firearm and ammunition had moved at some time from one state to another.

The second element has been proved due to the parties’ stipulation contained in Instruction No. ____.

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.

INSTRUCTION NO. 21
COUNT TWO: CONTROLLED SUBSTANCES – POSSESSION WITH INTENT TO
DISTRIBUTE

Count Two of the indictment charges that on or about _____, in the State and District of Colorado, Defendant _____ did knowingly and intentionally possess with the intent to distribute five grams or more of methamphetamine, its salts, isomers, and salts of its isomers, a Schedule II controlled substance, all in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B).

Section 841(a)(1) of Title 21 of the United States Code provides, in part, that:

"(a) . . . it shall be unlawful for any person knowingly or intentionally--

(1) to . . . possess with intent to . . . distribute, or dispense, . . . a controlled substance; . . . ,"

This law makes it a crime to possess a controlled substance with the intent to distribute it. To find Mr./Ms. _____ guilty of this crime you must be convinced that the Government has proved each of the following beyond a reasonable doubt:

First: Mr./Ms. _____ knowingly or intentionally possessed a controlled substance as charged;

Second: the substance was in fact methamphetamine;

Third: Mr./Ms. _____ possessed the substance with the intent to distribute it.

If you find Mr./Ms. _____ guilty of possession with intent to distribute, then you must also decide, unanimously, whether the amount of methamphetamine that s/he possessed with intent was at least 5 grams or more.

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.

INSTRUCTION NO. 22
SIMPLE POSSESSION – LESSER INCLUDED OFFENSE

If you find Mr./Ms. _____ not guilty of possession with intent to distribute a mixture or substance of methamphetamine, or if, after all reasonable efforts, you are unable to agree on a verdict as to that offense, then you must determine whether Mr./Ms. _____ is guilty or not guilty of possession of a mixture or substance of methamphetamine.

The difference between these two offenses is that, to convict Mr./Ms. _____ of possession of a mixture or substance containing a detectable amount of methamphetamine, the Government does not have to prove the intent to distribute it. This is an element of the greater offense, but not of the lesser included offense.

For you to find Mr./Ms. _____ guilty of possession of a mixture or substance containing a detectable amount of methamphetamine, the Government must prove each of the following elements beyond a reasonable doubt:

First: that on or about _____, in the State and District of Colorado, Mr./Ms. _____ possessed a mixture or substance containing a detectable amount of methamphetamine, a schedule II controlled substance;

Second: that Mr./Ms. _____ did so knowingly and intentionally.

If you are convinced that the Government has proved both of these elements beyond a reasonable doubt, you may find Mr./Ms. _____ guilty of the lesser included offense. If you have a reasonable doubt about either of these elements, then you must find Mr./Ms. _____ not guilty of the lesser included offense.

INSTRUCTION NO. 23
“A CONTROLLED SUBSTANCE” – DEFINED

You are instructed, as a matter of law, that methamphetamine is a controlled substance.

It is solely for the jury, however, to determine whether or not the Government has proven beyond a reasonable doubt that Mr./Ms. _____ possessed a substance which was methamphetamine.

INSTRUCTION NO. 24
KNOWLEDGE OF PRECISE CONTROLLED SUBSTANCE NEED NOT BE PROVEN

It is not necessary for the Government to prove that Mr./Ms. _____, knew the precise nature of the controlled substance that was possessed.

The Government must prove beyond a reasonable doubt, however, that Mr./Ms. _____ did know that some type of controlled substance was possessed.

INSTRUCTION NO. 25
COUNT THREE: USING/CARRYING A FIREARM DURING COMMISSION OF OR
POSSESSION OF A FIREARM IN FURTHERANCE OF A DRUG TRAFFICKING
CRIME

Count Three of the Indictment charges that on or about _____, in the State and District of Colorado, Defendant, _____, did knowingly carry and use a firearm during and in relation to a drug trafficking crime, and did knowingly possess the firearm in furtherance of such crime, for which s/he may be prosecuted in a court of the United States, in violation of 18 U.S.C. § 924(c)(1)(A). This drug trafficking crime is described in Count Two.

Section 924(c) of the United States Code provides, in pertinent part, that

“Any person who, during and in relation to any . . . drug trafficking crime . . . , uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm,” shall be guilty of an offense against the United States.

This law can be violated in one of two ways, as described below:

1. Use or carry during and in relation to

First, this law makes it a crime to use or carry a firearm during and in relation to any drug trafficking crime for which a person may be prosecuted in a court 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: Mr./Ms. _____ committed the crime of Controlled Substances – Possession with Intent to Distribute as charged in Count Two of the indictment. You are instructed that Controlled Substances – Possession with Intent to Distribute is a drug trafficking crime;

Second: Mr./Ms. _____ used or carried a firearm;

Third: during and in relation to Controlled Substances – Possession with Intent to Distribute.

The phrase “during and in relation to” means that the firearm played an integral part in the underlying crime, that it had a role in, facilitated (i.e., made easier), or had the potential of facilitating the underlying crime.

A defendant knowingly “uses” a firearm when it (1) is readily accessible and (2) is actively employed during and in relation to the underlying crime.

A defendant knowingly “carries” a firearm when s/he (1) possesses the firearm through the exercise of ownership or control and (2) transports or moves the firearm from one place to another.

In determining whether the defendant knowingly used or carried a firearm during and in relation to the underlying crime, you may consider all of the facts received in evidence including the nature of the crime, the usefulness of a firearm to the crime, the extent to which a firearm actually was observed before, during and after the time of the crime, and any other facts that bear on the issue.

A firearm plays an integral part in the underlying crime when it furthers the purpose or effect of the crime and its presence or involvement is not the result of coincidence. The Government must prove a direct connection between the defendant using or carrying of the firearm and the underlying crime but the crime need not be the sole reason the defendant used or carried the 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.

2. Possession in furtherance of

Second, the 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: Mr./Ms. _____ committed the crime of Controlled Substances – Possession with Intent to Distribute as charged in Count Two of the indictment. You are instructed that Controlled Substances – Possession with Intent to Distribute is a drug trafficking crime;

Second: Mr./Ms. _____ 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. 26
COUNT THREE: UNANIMITY OF THEORY

Your verdict must be unanimous. Count Three of the Indictment accuses Mr./Ms. _____ of committing the following acts:

1. Carrying or using a firearm during and in relation to a drug trafficking crime and
2. Possessing a firearm in furtherance of a drug trafficking crime

The Government does not have to prove both of these different acts for you to return a guilty verdict on Count Three. But in order to return a guilty verdict, all twelve of you must agree upon which of the listed acts, if any, Mr./Ms. _____ committed and that s/he committed at least one of the acts listed.

INSTRUCTION NO. 27
COUNT FOUR: PROHIBITION ON OWNERSHIP OR POSSESSION OF BODY
ARMOR BY VIOLENT FELONS

Count Four of the Indictment charges that on or about _____, in the State and District of Colorado, Defendant, _____, having been convicted of felonies, namely a crime of violence, did knowingly own and possess body armor.

Section 931(a) of the United States Code provides, in pertinent part, that

“ . . . it shall be unlawful for a person to purchase, own, or possess body armor, if that person has been convicted of a felony that is—

(1) a crime of violence”

This law makes it a crime for a person who has been convicted of certain crimes to possess body armor. For you to find Mr./Ms. _____ guilty, the Government must prove each of the following beyond a reasonable doubt:

First: that Mr./Ms. _____ had been convicted of a crime of violence;

Second: that Mr./Ms. _____ purchased, owned, or possessed body armor;

Third: that the body armor had traveled in interstate or foreign commerce at some point during its existence; and

Fourth: that Mr./Ms. _____ did so knowingly; that is, Mr./Ms. _____ must know that the item was body armor and the possession must be voluntary and intentional.

“Body armor” means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.

The Government may establish the interstate commerce requirement by showing that the body armor at any time had traveled across a state boundary line, or was manufactured outside the state where Mr./Ms. _____ possessed it.

The Government must prove that Mr./Ms. _____ voluntarily and intentionally had physical possession of the body armor.

To possess an item or property means to exercise control or authority over the

item or property, voluntarily and intentionally.

Possession may be either sole, by Mr./Ms. _____ alone, or joint, that is, it may be shared with other persons, as long as Mr./Ms. _____ exercised control or authority over the item or property.

Possession may be either actual or constructive.

Actual possession is knowingly having direct physical control or authority over the item or property.

INSTRUCTION NO. 28
PROOF OF KNOWLEDGE OR INTENT

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

You may infer, but you certainly are not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

INSTRUCTION NO. 29
“KNOWINGLY” – DEFINED

The term “knowingly”, as used in these instructions to describe the alleged state of mind of Mr./Ms. _____, means that s/he was conscious and aware of his/her action, realized what s/he was doing or what was happening around him/her, and did not act because of ignorance, mistake, or accident.

INSTRUCTION NO. 30
"INTENTIONALLY" – DEFINED

The term intentionally, where I have used it in these instructions, means, "deliberately and purposely." That is, Mr./Ms. _____'s acts must have been the product of his/her conscious objective, rather than the product of mistake or accident.

INSTRUCTION NO. 31
“TO POSSESS” – DEFINED

The term “to possess” means to exercise control or authority over something at a given time. There are several types of possession — constructive, sole, and joint.

The “possession” is considered to be actual when a person knowingly has direct physical control or authority over something. The “possession” is called constructive when a person does not have direct physical control over something, but can knowingly control it and intends to control it, sometimes through another person.

The “possession” may be knowingly exercised by one person exclusively which is called sole possession or the “possession” may be knowingly exercised jointly when it is shared by two or more persons.

INSTRUCTION NO. 32
DUTY TO DELIBERATE – VERDICT FORM

After the closing arguments, the court security officer will escort you to the jury room and will give you the original jury instructions and the original verdict form. Any exhibits admitted into evidence will also be placed in the jury room for your review. You will be allowed to take your notes and your copy of the jury instructions that I have just read with you. The original of the jury instructions and the exhibits are a part of the Court record. Do not place any marks or notes on them. Your copy of the instructions may be marked or used in any way you see fit.

When you go to the jury room, you should first select a foreperson, who will help to guide your deliberations and will speak for you here in the courtroom. The second thing you should do is review the instructions. 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 instructions throughout your deliberations. Remember, you are the judges of the facts, but you are bound by your oath to follow the law stated in the instructions.

A Verdict Form has been prepared to help guide you through your deliberations. To reach a verdict, whether it is guilty or not guilty, all of you must agree. Your verdict must be unanimous on each count of the indictment. Your deliberations will be secret. You will never have to explain your verdict to anyone. Your foreperson will write the unanimous answer of the jury in the space provided for each count of the indictment, either guilty or not guilty. This is the only verdict form that you will receive, so please do not write on the original verdict form or indicate your answer to any questions on the original verdict form until you have all agreed on the answer.

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 a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, 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.

This is an important case. If you should fail to agree upon a verdict, the case is left open and must be tried again. Obviously, another trial would require the parties to make another large investment of time and effort, and there is no reason to believe that the case can be tried again by either side better or more exhaustively than it has been tried before you.

You are reminded that Mr./Ms. _____ is presumed innocent, and that the Government, not Mr./Ms. _____, has the burden of proof and it

must prove Mr./Ms. _____ guilty beyond a reasonable doubt. As judges of the facts, you must decide whether the Government has proved Mr./Ms. _____'s guilt beyond a reasonable doubt.

It is your duty, as jurors, to consult with one another and deliberate with a view toward reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. Those of you who believe that the Government has proved Mr./Ms. _____ guilty beyond a reasonable doubt should stop and ask yourselves if the evidence is really convincing enough. Those of you who believe that the Government has not proved Mr./Ms. _____ guilty beyond a reasonable doubt should stop and ask yourselves if the doubt you have is a reasonable one. In the course of your deliberations do not hesitate to reexamine your own views and change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

After you reach a verdict, your foreperson should ensure that the original verdict form is complete and then he/she must sign and date the original verdict form. The foreperson should then advise the court security officer that you have reached a verdict, but do not tell the court security officer what your verdict is. The court security officer will then inform me that you have reached a verdict. The foreperson should remain in possession of the original verdict form until you return to the courtroom and I request that it be given to me.

INSTRUCTION NO. 33
COMMUNICATIONS WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a folded note through the court security officer. Do not disclose the content of your note to the court security officer. No member of the jury should hereafter attempt to communicate with me except in writing and I will communicate with any member of the jury on anything concerning the case only in writing, or orally here in open court. You are not to tell anyone – including me – how the jury stands, numerically or otherwise, until you have reached a unanimous verdict and I have discharged you.

If you send a note to me containing a question or request for further direction, please bear in mind that responses take considerable time and effort. Before giving an answer or direction I must first notify the attorneys and bring them back to the court. I must confer with them, listen to arguments, research the legal authorities, if necessary, and reduce the answer or direction to writing.

There may be some questions that, under the law, I am not permitted to answer. If it is improper for me to answer the question, I will tell you that. Please do not speculate about what the answer to your question might be or why I am not able to answer a particular question.