

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 2:17-cr-24

Plaintiff,

Hon. Robert J. Jonker
Chief U.S. District Judge

vs.

DERRICK GARRELL SAMUELS,
a/k/a “Bam,”

Defendant.

_____ /

GOVERNMENT’S PROPOSED JURY INSTRUCTIONS

The United States of America, by its attorneys, Andrew Byerly Birge, United States Attorney, and Maarten Vermaat, Assistant United States Attorney, hereby respectfully submit the following proposed jury instructions to the Court.¹

Respectfully submitted,

ANDREW BYERLY BIRGE
United States Attorney

Date: Jan. 28, 2018

/s/ Maarten Vermaat
MAARTEN VERMAAT
Assistant United States Attorney

¹ The government provided a copy of these proposed instructions to Counsel for Defendant. Discussions with Counsel indicate that these instructions are likely to be acceptable. Because the government has not received approval to file these instructions as “joint” jury instructions, these instructions are filed as the government’s proposed instructions.

PROPOSED JURY INSTRUCTIONS²

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7.05A	Impeachment of Defendant by Prior Conviction

² The government will provide an electronic copy to the Court.

³ All instructions are drawn from *Sixth Circuit Criminal Pattern Jury Instruction* (January 8, 2018) unless otherwise noted.

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1.01 INTRODUCTION

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

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

(3) Then I will explain the elements, or parts, of the crime that the defendant is accused of committing.

[(4) Then I will explain the defendant's position.]

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

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

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

1.02 JURORS' DUTIES

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

(2) Your second duty is to take the law that I give you, apply it to the facts, and decide if the government has proved the defendant guilty beyond a reasonable doubt. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

[(3) The lawyers have talked about the law during their arguments. But if what they said is different from what I say, you must follow what I say. What I say about the law controls.]

(4) Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.

1.03 PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

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

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

(3) This means that the defendant has no obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the government to prove that he is guilty, and this burden stays on the government from start to finish. You must find the defendant not guilty unless the government convinces you beyond a reasonable doubt that he is guilty.

(4) The government must prove every element of the crime charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

(5) Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the government has proved the defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

1.04 EVIDENCE DEFINED

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

(2) The evidence in this case includes only what the witnesses said while they were testifying under oath; the exhibits that I allowed into evidence; [the stipulations that the lawyers agreed to]; [and the facts that I have judicially noticed].

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

(4) During the trial I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things 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.

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

1.05 CONSIDERATION OF EVIDENCE

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

1.06 DIRECT AND CIRCUMSTANTIAL EVIDENCE

(1) Now, some of you may have heard the terms “direct evidence” and “circumstantial evidence.”

(2) Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

(3) Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

(4) It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, or say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

1.07 CREDIBILITY OF WITNESSES

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

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

(A) Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what was happening, and may make a mistake.

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

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

(D) Ask yourself how the witness acted while testifying. Did the witness appear honest? Or did the witness appear to be lying?

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

[(F) Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did something (or failed to say or do something) at any other time that is inconsistent with what the witness said while testifying. If you believe that the witness was inconsistent, ask yourself if this makes the witness's testimony less believable. Sometimes it may; other times it may not. Consider whether the inconsistency was about something important, or about some unimportant detail. Ask yourself if it seemed like an innocent mistake, or if it seemed deliberate.]

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

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

1.08 NUMBER OF WITNESSES

(1) One more point about the witnesses. Sometimes jurors wonder if the number of witnesses who testified makes any difference.

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

1.09 LAWYERS' OBJECTIONS

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

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

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

INTRODUCTION

Instruction 2.01

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

(2) But before I do that, I want to emphasize that the defendant is only on trial for the particular crime charged in the indictment (and the lesser charges that I will explain to you). Your job is limited to deciding whether the government has proved the crime charged (or one of those lesser charges).

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

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

Instruction 2.01A

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

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

DEFINING THE CRIME: CONSPIRACY
(Count 1)

Instruction 14.05

(1) **Count 1** charges the defendant with conspiracy to distribute and possess with intent to distribute heroin. It is a crime for two or more persons to conspire, or agree, to commit a drug crime, even if they never actually achieve their goal.

(2) A conspiracy is a kind of criminal partnership. For you to find the defendant guilty of the conspiracy charge, the government must prove each and every one of the following elements beyond a reasonable doubt:

(A) First, that two or more persons conspired, or agreed, to distribute or possess with intent to distribute heroin.

(B) Second, that the defendant knowingly and voluntarily joined the conspiracy.

(3) Now I will give you more detailed instructions on some of these terms.

(A) With regard to the first element – a criminal agreement – the government must prove that two or more persons conspired, or agreed, to cooperate with each other to distribute and possess with intent to distribute heroin.

(i) This does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the government has proved an agreement. But without more they are not enough.

(ii) What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to distribute and possess with intent to distribute heroin. This is essential.

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

(iv) One more point about the agreement. The indictment accuses the defendants of conspiring to commit several drug crimes. The government does not have to prove that the defendants agreed to commit all these crimes. But the government must prove an agreement to commit at least one of them for you to return a guilty verdict on the conspiracy charge.

(B) With regard to the second element – the defendant’s connection to the conspiracy – the government must prove that the defendant knowingly and voluntarily joined that agreement.

(i) The government must prove that the defendant knew the conspiracy’s main purpose and voluntarily joined the conspiracy intending to help advance or achieve its goals.

(ii) This does not require proof that the defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that the defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

(iii) Further, this does not require proof that the defendant knew the drug involved was heroin. It is enough that the defendant knew that it was some kind of controlled substance. Nor does this require proof that the defendant knew how much heroin or cocaine base was involved. It is enough that the defendant knew that some quantity was involved.

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

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

(4) You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of the conspiracy charge in Count 1.

UNINDICTED, UNNAMED OR SEPARATELY TRIED CO-CONSPIRATORS

Instruction 3.06

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

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

VENUE

Instruction 3.07

(1) Now, some of the events that you have heard about happened in other places. There is no requirement that the entire conspiracy take place here in the Upper Peninsula. But for you to return a guilty verdict on the conspiracy charge, the government must convince you that either the agreement, or one of the acts in furtherance took place here in the Upper Peninsula.

(2) Unlike all the other elements that I have described, this is just a fact that the government only has to prove by a preponderance of the evidence. This means the government only has to convince you that it is more likely than not that part of the conspiracy took place here.

(3) Remember that all the other elements I have described must be proved beyond a reasonable doubt.

**DEFINING THE CRIME:
DISTRIBUTION OF A CONTROLLED SUBSTANCE
(Counts 2, 3 and 4)**

Instruction 14.02

(1) In Counts 2, 3 and 4, the defendant is charged with the crime of distributing heroin. Heroin is a controlled substance. For you to find the defendant guilty of this crime, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) The defendant knowingly or intentionally distributed heroin, and

(B) That the defendant knew at the time of distribution that the substance was .

(2) Now I will give you more detailed instructions on some of these terms.

(A) To prove that the defendant knowingly distributed the heroin, the defendant did not have to know that the substance was heroin. It is enough that the defendant knew that it was some kind of controlled substance. Further, the defendant did not have to know how much heroin he distributed. It is enough that the defendant knew that he distributed some quantity of heroin.

(B) The term “distribute” means the defendant delivered or transferred a controlled substance. The term distribute includes the actual, constructive, or attempted transfer of a controlled substance. The term distribute includes the sale of a controlled substance.

(3) In determining whether the defendant knowingly or intentionally distributed a controlled substance, you may consider all the facts and circumstances shown by the evidence, including the defendant’s words and actions. Intent to distribute may be inferred from the possession of a large quantity of drugs, too large for personal use alone. You may also consider the estimated street value of the drugs, the purity of the drugs, the manner in which the drugs were packaged, the presence or absence of a large amount of cash, the presence or absence of weapons, and the presence or absence of equipment used for the sale of drugs. The law does not require you to draw such an inference, but you may draw it.

(4) If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

**DEFINING THE CRIME:
ATTEMPTING TO DISTRIBUTE A CONTROLLED SUBSTANCE
AND
AIDING AND ABETTING ANOTHER IN THE COMMISSION OF THIS
OFFENSE
(Count 5)**

Instructions 14.02, 8.03B, 5.01, 4.01

(1) In Count 5, the defendant is charged with the crimes of (a) attempted distribution of a controlled substance, and (b) aiding and abetting another in the attempted distribution of a controlled substance. The government does not have to prove both of these for you to return a guilty verdict on these charges. Proof beyond a reasonable doubt on either of these ways is enough. In order for you to return a guilty verdict, all twelve of you must agree that at least one of these has been proved; however, all of you need not agree that the same one has been proved.

(2) For you to find the defendant guilty of attempting to distribute heroin, you must be convinced that the government has proved both of the following elements beyond a reasonable doubt:

(A) First, that the defendant intended to commit the crime of distribution of heroin.

(B) And second, that the defendant did some overt act that was a substantial step towards committing the crime of distribution of heroin.

(C) Merely preparing to commit a crime is not a substantial step. The defendant's conduct must go beyond mere preparation, and must strongly confirm that he intended to distribute heroin. But the government does not have to prove that the defendant did everything except the last act necessary to complete the crime. A substantial step beyond mere preparation is enough.

(2) If you are convinced that the government has proved both of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about either one of these elements, then you must find the defendant not guilty.

(3) You may also find the defendant guilty of the charge in Count 5 if you conclude that he aided and abetted another in the attempted distribution of heroin.

(6) For you to find the defendant guilty of aiding and abetting another in the attempted distribution of heroin, it is not necessary for you to find that he personally committed the crime. You may also find he guilty if he intentionally helped someone else to commit the crime. A person who does this is called an aider and abettor.

(7) But for you to find the defendant guilty as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the crime of attempted distribution of heroin was committed.

(B) Second, that the defendant helped to commit the crime.

(C) And third, that the defendant intended to help commit the crime.

(8) Proof that the defendant may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more it is not enough.

(9) What the government must prove is that the defendant did something to help the crime with the intent that the crime be committed.

(10) If you are convinced that the government has proved that the defendant (a) attempted to distribute heroin, or (b) aided and abetting another in the attempted distribution of heroin, say so by returning a guilty verdict on that charge.

USE OF THE PHRASE “ON OR ABOUT”

Instruction 2.04

- (1) Next, I want to say a word about the date mentioned in the indictment.

- (2) The indictment charges that the crimes happened “on or about” various dates. The government does not have to prove that the crime happened on that exact date. But the government must prove that the crime happened reasonably close to that date.

INFERRING REQUIRED MENTAL STATE

Instruction 2.08

- (1) Next, I want to explain something about proving a defendant's state of mind.
- (2) Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.
- (3) But a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.
- (4) You may also consider the natural and probable results of any acts that the defendant knowingly did, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

USE OF THE WORD "AND" IN THE INDICTMENT

Instruction 2.12

Although the indictment charges that the statute was violated by acts that are connected by the word "and," it is sufficient if the evidence establishes a violation of the statute by any one of the acts charged. Of course, this must be proved beyond a reasonable doubt.

INTRODUCTION

Instruction 7.01

That concludes the part of my instructions explaining the elements of the crime [and the defendant's position]. Next I will explain some rules that you must use in considering some of the testimony and evidence.

**DEFENDANT’S ELECTION NOT TO TESTIFY OR PRESENT EVIDENCE /
DEFENDANT’S TESTIMONY**

Instructions 7.02A, 7.02B

(1) A defendant has an absolute right not to testify [or present evidence]. The fact that he did not testify [or present any evidence] cannot be considered by you in any way. Do not even discuss it in your deliberations.

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

OR

(1) You have heard the defendant testify. Earlier, I talked to you about the “credibility” or the “believability” of the witnesses. And I suggested some things for you to consider in evaluating each witness’s testimony.

(2) You should consider those same things in evaluating the defendant’s testimony.

OPINION TESTIMONY

Instruction 7.03

(1) You have heard the testimony of Ron Koski, Andrea Johnston, Pat McNeely and Aaron Voogd, who testified as opinion witnesses.

(2) You do not have to accept their opinions. In deciding how much weight to give these opinions, you should consider the witnesses' qualifications and how he or she reached his or her conclusions. Also consider the other factors discussed in these instructions for weighing the credibility of witnesses.

(3) Remember that you alone decide how much of a witness's testimony to believe, and how much weight it deserves.

**IMPEACHMENT BY PRIOR INCONSISTENT STATEMENT
NOT UNDER OATH**

Instruction 7.04

(1) You have heard the testimony of [TBD]. You have also heard that before this trial he/she made a statement that may be different from his/her testimony here in court.

(2) This earlier statement was brought to your attention only to help you decide how believable his/her testimony was. You cannot use it as proof of anything else. You can only use it as one way of evaluating his/her testimony here in court.

IMPEACHMENT OF DEFENDANT BY PRIOR CONVICTION

Instruction 7.05A

- (1) You have heard that before this trial the defendant was convicted of a crime.

- (2) This earlier conviction was brought to your attention only as one way of helping you decide how believable his testimony was. You cannot use it for any other purpose. It is not evidence that he is guilty of the crime that he is on trial for now.

**IMPEACHMENT OF A WITNESS OTHER THAN DEFENDANT BY PRIOR
CONVICTION**

Instruction 7.05B

(1) You have heard the testimony of [TBD]. You have also heard that before this trial he/she was convicted of a crime.

(2) This earlier conviction was brought to your attention only as one way of helping you decide how believable his/her testimony was. Do not use it for any other purpose. It is not evidence of anything else.

**TESTIMONY OF AN ADDICT-INFORMANT UNDER GRANT OF
IMMUNITY OR REDUCED CRIMINAL LIABILITY**

Instruction 7.06B

(1) You have heard the testimony of [TBD]. You have also heard that he was using _____ during the time that he testified about, and that the government has promised him that he will not be prosecuted for _____ [or will _____] in exchange for his testimony.

(2) It is permissible for the government to make such a promise. But you should consider [TBD]'s testimony with more caution than the testimony of other witnesses. An addict may have a constant need for drugs, and for money to buy drugs, and may also have a greater fear of imprisonment because his supply of drugs may be cut off. Think about these things and consider whether his testimony may have been influenced by the government's promise.

(3) Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

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

Instruction 7.07

(1) You have heard the testimony of [TBD]. You have also heard that the government has promised him that [he will not be prosecuted for _____] [he will _____] in exchange for his cooperation.

(2) It is permissible for the government to make such a promise. But you should consider [TBD]'s testimony with more caution than the testimony of other witnesses. Consider whether his testimony may have been influenced by the government's promise.

(3) Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

TESTIMONY OF AN ACCOMPLICE

Instruction 7.08

- (1) You have heard the testimony of [TBD]. You have also heard that he was involved in the same crime that the defendants are charged with committing. You should consider [TBD]'s testimony with more caution than the testimony of other witnesses.
- (2) Do not convict the defendants based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.
- (3) The fact that [TBD] has pleaded guilty to a crime is not evidence that the defendants are guilty, and you cannot consider this against the defendant in any way.

IDENTIFICATION TESTIMONY

Instruction 7.11

(1) You have heard the testimony of [TBD], who has identified the defendant as the person who sold heroin. You should carefully consider whether this identification was accurate and reliable.

(2) In deciding this, you should especially consider if the witness had a good opportunity to see the person at that time. For example, consider the visibility, the distance, whether the witness had known or seen the person before, and how long the witness had to see the person.

(3) Consider all these things carefully in determining whether the identification was accurate and reliable.

(4) Remember that the government has the burden of proving beyond a reasonable doubt that the defendant was the person who committed the crime charged.

SUMMARIES AND OTHER MATERIALS NOT ADMITTED IN EVIDENCE

Instruction 7.12

During the trial you have seen counsel use summaries, charts, drawings, calculations, or similar material which were offered to assist in the presentation and understanding of the evidence. This material is not itself evidence and must not be considered as proof of any facts.

TRANSCRIPTIONS OF TAPE RECORDINGS

Instruction 7.17

(1) You have heard some tape recordings that were received in evidence, and you were given some written transcripts of the tapes.

(2) 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 tapes themselves are the evidence. If you noticed any differences between what you heard on the tapes and what you read in the transcripts, you must rely on what you heard, not what you read. And if you could not hear or understand certain parts of the tapes, you must ignore the transcripts as far as those parts are concerned.

STIPULATIONS

Instruction 7.21

The government and the defendant have agreed, or stipulated, to certain facts. This agreement is stated in government exhibit [TBD]. You must accept as proved the statements in government exhibit [TBD], which states the results of testing of suspected controlled substances.

INTRODUCTION

Instruction 8.01

(1) That concludes the part of my instructions explaining the rules for considering some of the testimony and evidence. Now let me finish up by explaining some things about your deliberations in the jury room, and your possible verdicts.

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

(3) Once you start deliberating, do not talk to the jury officer, or to me, or to anyone else except each other about the case. If you have any questions or messages, you must write them down on a piece of paper, sign them, and then give them to the jury officer. The officer will give them to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me some time to get back to you. Any questions or messages normally should be sent to me through your foreperson.

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

(5) One more thing about messages. Do not ever write down or tell anyone, including me, how you stand on your votes. For example, do not write down or tell anyone that you are split 6-6, or 8-4, or whatever your vote happens to be. That should stay secret until you are finished.

**EXPERIMENTS, RESEARCH, INVESTIGATION AND OUTSIDE
COMMUNICATIONS**

Instruction 8.02

(1) Remember that you must make your decision based only on the evidence that you saw and heard here in court.

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

(3) 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. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result, which would require the entire trial process to start over.

UNANIMOUS VERDICT

Instruction 8.03

- (1) Your verdict, whether it is guilty or not guilty, must be unanimous [as to each count].
- (2) To find the defendant guilty [of a particular count], every one of you must agree that the government has overcome the presumption of innocence with evidence that proves his guilt beyond a reasonable doubt.
- (3) To find him not guilty [of a particular count], every one of you must agree that the government has failed to convince you beyond a reasonable doubt.
- (4) Either way, guilty or not guilty, your verdict must be unanimous [as to each count].

DUTY TO DELIBERATE

Instruction 8.04

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

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

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

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

PUNISHMENT

Instruction 8.05

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

(2) Deciding what the punishment should be is my job, not yours. It would violate your oaths as jurors to even consider the possible punishment in deciding your verdict.

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

VERDICT FORM

Instruction 8.06

(1) I have prepared a verdict form that you should use to record your verdict. The form reads as follows: [see final page of instructions].

(2) If you decide that the government has proved the charge against the defendant beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. If you decide that the government has not proved the charge against him beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. Your foreperson should then sign the form, put the date on it, and return it to me.

VERDICT LIMITED TO CHARGES AGAINST THIS DEFENDANT

Instruction 8.08

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

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

COURT HAS NO OPINION

Instruction 8.09

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

JUROR NOTES

Instruction 8.10

(1) Remember that if you elected to take notes during the trial, your notes should be used only as memory aids. You should not give your notes greater weight than your independent recollection of the evidence. You should rely upon your own independent recollection of the evidence or lack of evidence and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impression of each juror.

(2) Whether you took notes or not, each of you must form and express your own opinion as to the facts of the case.

VERDICT FORM

We, the jury, unanimously find the following:

Question 1. With respect to the charge in count 1 of the superseding indictment, which charges conspiracy to distribute and possess with intent to distribute heroin, we find the defendant, Derrick Garrell Samuels:

Guilty _____ Not Guilty _____

Question 2. With respect to the charge in count 2 of the superseding indictment, which charges distribution of heroin, we find the defendant, Derrick Garrell Samuels:

Guilty _____ Not Guilty _____

Question 3. With respect to the charge in count 3 of the superseding indictment, which charges distribution of heroin, we find the defendant, Derrick Garrell Samuels:

Guilty _____ Not Guilty _____

Question 4. With respect to the charge in count 4 of the superseding indictment, which charges distribution of heroin, we find the defendant, Derrick Garrell Samuels:

Guilty _____ Not Guilty _____

Question 5. With respect to the charge in count 5 of the superseding indictment, which charges attempted distribution of heroin and aiding and abetting the attempted distribution of heroin, we find the defendant, Derrick Garrell Samuels:

Guilty _____ Not Guilty _____

Date: _____

Foreperson: _____