

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTONIO JEVON GAYDEN,

Defendant.

No. 08-CR-60-LRR

**FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

## **INSTRUCTION NO. 1**

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

## **INSTRUCTION NO. 2**

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

### INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

## INSTRUCTION NO. 4

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, including the defendant, and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

## **INSTRUCTION NO. 5**

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

## INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness, including the defendant, who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of other witnesses.

## INSTRUCTION NO. 7

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

You should judge the testimony of a defendant in the same manner as you judge the testimony of any other witness.

You have heard evidence that Eric Owens and Antonio Jevon Gayden were once convicted of crimes. You may use that evidence only to help you decide whether to believe these witnesses and how much weight to give their testimony.

Eric Owens’s guilty plea cannot be considered by you as any evidence of this defendant’s guilt. Eric Owens’s guilty plea can be considered by you only for the purpose of determining how much, if at all, to rely upon his testimony.

## INSTRUCTION NO. 8

You have heard testimony that the defendant made a statement to officers from the Cedar Rapids Police Department. It is for you to decide:

*First*, whether the defendant made the statement; and

*Second*, if so, how much weight you should give to it.

## INSTRUCTION NO. 9

You have heard testimony from Eric Owens. This witness entered into an agreement with the government which states that if he provides substantial assistance to the government in its investigation of the crimes alleged in the Indictment, the prosecutor could file a motion for a reduction of his sentence. If the prosecutor handling his case believes he provided substantial assistance, that prosecutor can file in the court in which the charges are pending against this witness a motion to reduce his sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

The testimony of Eric Owens was received into evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by his hope of receiving a reduced sentence is for you to decide.

## INSTRUCTION NO. 10

You have heard testimony from a person described as an expert. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state his or her opinion on matters in that field and may also state the reasons for his or her opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

## **INSTRUCTION NO. 11**

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was received by you.

## INSTRUCTION NO. 12

The Indictment in this case charges the defendant with two crimes.

In Count 1, the Indictment charges that, on or about September 23, 2008, the defendant knowingly and intentionally possessed with the intent to distribute and aided and abetted the possession with the intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of cocaine base, commonly known as “crack cocaine.”

In Count 2, the Indictment charges that, between about July 2008 and September 23, 2008, the defendant knowingly and intentionally combined, conspired, confederated and agreed with another to distribute and possess with intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of cocaine base, commonly known as “crack cocaine.”

The defendant has pleaded not guilty to these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon a defendant to prove that he is innocent.

## INSTRUCTION NO. 13

Count 1 of the Indictment charges the defendant with possession with intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of cocaine base and/or aiding and abetting the possession with intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of cocaine base. The defendant may be found guilty of this offense under one of the following two alternatives: (1) possession with intent to distribute a mixture or substance containing a detectable amount of cocaine base; and (2) aiding and abetting the commission of possession with intent to distribute a mixture or substance containing a detectable amount of cocaine base. The defendant may also be convicted of Count 1 on a lesser-included offense, possession of a mixture or substance containing a detectable amount of cocaine base.

### *First Alternative:*

#### *Possession with Intent to Distribute a Mixture or Substance Containing a Detectable Amount of Cocaine Base*

The crime of possession with intent to distribute a mixture or substance containing a detectable amount of cocaine base has three essential elements, which are:

*One*, on or about September 23, 2008, the defendant was in possession of a mixture or substance containing a detectable amount of cocaine base;

*Two*, the defendant knew that he was in possession of a mixture or substance containing a detectable amount of cocaine base; and

*Three*, the defendant intended to distribute some or all of a mixture or substance containing a detectable amount of cocaine base to another person.

(CONTINUED)

### INSTRUCTION NO. 13 (Cont'd)

If you unanimously find the government has proven all of these essential elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1 under this alternative; otherwise you must find the defendant not guilty of the crime charged under Count 1 under this alternative.

#### *Second Alternative:*

#### *Aiding and Abetting the Commission of Possession with Intent to Distribute a Mixture or Substance Containing a Detectable Amount of Cocaine Base*

The defendant may also be found guilty of Count 1 even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of possession with intent to distribute a mixture or substance containing a detectable amount of cocaine base.

In order to have aided and abetted the commission of possession with intent to distribute a mixture or substance containing a detectable amount of cocaine base, a person must:

*One*, have known the crime of possession with intent to distribute a mixture or substance containing a detectable amount of cocaine base was being committed or was going to be committed; and

*Two*, have knowingly acted in some way for the purpose of causing, encouraging or aiding the commission of possession with intent to distribute a mixture or substance containing a detectable amount of cocaine base.

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### INSTRUCTION NO. 13 (Cont'd)

If all of these elements have been proven beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under this alternative; otherwise you must find the defendant not guilty under this alternative.

For you to find the defendant guilty of possession with intent to distribute a mixture or substance containing a detectable amount of cocaine base by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the essential elements of possession with intent to distribute cocaine base were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others, or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

#### *Lesser-Included Offense:*

#### *Possession of a Mixture or Substance Containing a Detectable Amount of Cocaine Base*

The crime of possession of a mixture or substance containing a detectable amount of cocaine base, a lesser-included offense of the crime charged in Count 1 of the Indictment, has two essential elements, which are:

*One*, on or about September 23, 2008, the defendant was in possession of a mixture or substance containing a detectable amount of cocaine base; and

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**INSTRUCTION NO. 13 (Cont'd)**

*Two*, the defendant knew he was in possession of a mixture or substance containing a detectable amount of cocaine base.

For you to find the defendant guilty of Count 1 of the Indictment under this lesser included offense, the government must prove all of these elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime under this alternative.

## INSTRUCTION NO. 14

The crime of conspiracy, as charged in Count 2 of the Indictment, has three essential elements, which are:

*One*, between about July of 2008 and September 23, 2008, two or more persons reached an agreement or came to an understanding to distribute and possess with intent to distribute a mixture or substance containing a detectable amount of cocaine base, commonly known as “crack cocaine”;

*Two*, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

*Three*, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement and understanding.

If all of these elements have been proven beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of conspiracy to distribute and possess with intent to distribute a mixture or substance containing a detectable amount of cocaine base; otherwise you must find the defendant not guilty of this crime.

## INSTRUCTION NO. 15

In considering whether the government has met its burden of proving the offense of conspiracy as alleged in Count 2 of the Indictment, you are further instructed as follows:

The government must prove that the defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is a defendant or named in the Indictment.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

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### **INSTRUCTION NO. 15 (Cont'd)**

You must decide, after considering all of the evidence, whether the conspiracy alleged in the Indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

## INSTRUCTION NO. 16

To assist you in determining whether there was an agreement or understanding to distribute and possess with intent to distribute a mixture or substance containing a detectable amount of cocaine base, you are advised that the elements of the crime of possession with intent to distribute cocaine base are set forth above in Instruction Number 13. The elements of the offense of distribution of cocaine base are:

*One*, on or about a particular date an individual intentionally transferred a mixture or substance containing a detectable amount of cocaine base to another person; and

*Two*, at the time of the transfer, the individual knew that it was a controlled substance, namely, a mixture or substance containing a detectable amount of cocaine base.

Keep in mind that Count 2 of the Indictment charges a conspiracy to commit the charged offense and does not require the government to prove that the crimes of distributing or possession with intent to distribute a mixture or substance containing a detectable amount of cocaine base were actually committed.

## INSTRUCTION NO. 17

If you have found beyond a reasonable doubt that a conspiracy existed and that the defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by a defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, for a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

## INSTRUCTION NO. 18

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" has been used in these instructions, it includes actual as well as constructive possession and also sole as well as joint possession.

## INSTRUCTION NO. 19

You are instructed as a matter of law that cocaine base is a Schedule II controlled substance. During this trial, you have heard the terms “crack cocaine” and “a mixture or substance containing a detectable amount of cocaine base” referred to interchangeably. You are instructed that “crack cocaine” and “a mixture and substance containing a detectable amount of cocaine base” refer to the same substance. You must ascertain whether or not the substances in question in Counts 1 and 2 were mixtures or substances containing a detectable amount of cocaine base. In doing so, you may consider all the evidence in the case which may aid the determination of that issue.

In determining whether the defendant is guilty of the offenses charged in the Indictment, the government is not required to prove that the amount or quantity of cocaine base was as charged in the Indictment. The government need only prove beyond a reasonable doubt that there was some measurable amount of cocaine base involved.

If you find the defendant guilty of any of the offenses charged, you will need to determine whether the quantity of cocaine base involved in the offense was 50 grams or more, 5 grams or more, but less than 50 grams, or less than 5 grams.

The burden of proof is on the government to establish the quantity beyond a reasonable doubt. For your information, one gram equals 1,000 milligrams, one ounce equals 28.35 grams, one pound equals 452.6 grams and one kilogram equals 1,000 grams.

## **INSTRUCTION NO. 20**

The term "distribute" means to deliver a controlled substance to the possession of another person. The term "deliver" means the actual or attempted transfer of a controlled substance to the possession of another person. No consideration for the delivery need exist, and it is not necessary that money or anything of value change hands. The law is directed at the act of "distribution" of a controlled substance and does not concern itself with any need for a "sale" to occur.

## INSTRUCTION NO. 21

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

## **INSTRUCTION NO. 22**

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

### INSTRUCTION NO. 23

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake or accident. You may consider evidence of the defendant's words, acts or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

## **INSTRUCTION NO. 24**

You will note that the Indictment charges that the offenses were committed “on or about” or “between about” certain dates. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

## **INSTRUCTION NO. 25**

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

## INSTRUCTION NO. 26

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because verdicts—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

*Third*, if a defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

*Fourth*, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

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**INSTRUCTION NO. 26 (Cont'd)**

*Fifth*, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. The verdicts, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts might be—that is entirely for you to decide.

**INSTRUCTION NO. 27**

Attached to these instructions you will find the Verdict Forms and Interrogatory Forms. The Verdict Forms and Interrogatory Forms are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms and Interrogatory Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms and Interrogatory Forms to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms and Interrogatory Forms, your foreperson will fill out the Verdict Forms and Interrogatory Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms and Interrogatory Forms in accord with the evidence and these instructions.

December 8, 2008  
DATE

Linda R. Reade  
LINDA R. READE  
CHIEF JUDGE, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA