

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OMORO CRUSOE,

Defendant.

No. 05-CR-71-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 NUMBER 1

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

INSTRUCTION NUMBER 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 NUMBER 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 NUMBER 4

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses 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.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

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

INSTRUCTION NUMBER 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 NUMBER 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness 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.

INSTRUCTION NUMBER 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 have heard evidence that [REDACTED] had an arrangement with the government under which he was paid for providing information to the government and for participating in controlled purchases of drugs. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his information or testimony may have been influenced by such payments is for you to determine.

You have heard testimony from [REDACTED]. This witness entered into an agreement with the government, providing that if the witness provides substantial assistance to the government in its investigation of crimes, the prosecutor could file a motion for a reduction of that witness's sentence. If the prosecutor handling the witness's case believes that the witness provided substantial assistance, that prosecutor can file in the court in which the charges were brought against the witness, a motion to reduce the witness's 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,

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INSTRUCTION NUMBER 7 (Cont'd)

if so, how much to reduce it. The witness's testimony was received in evidence and may be considered by you. You may give the testimony of this witness such weight as you think it deserves. Whether or not a witness's testimony may have been influenced by that witness's hope of receiving a reduced sentence is for you to decide.

You have heard evidence that some witnesses 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.

INSTRUCTION NUMBER 8

You have heard a certain category of evidence called "other acts" evidence. Here, that evidence is that the defendant was previously convicted of distributing cocaine and possessing cocaine with the intent to distribute it. You may not use this "other acts" evidence to decide whether the defendant carried out the acts involved in the crimes charged in the Indictment. In order to consider "other acts" evidence at all, you must first unanimously find, beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crimes charged in the Indictment. If you make this finding, then you may consider the "other acts" evidence to decide the defendant's intent, knowledge and the absence of mistake or accident. "Other acts" evidence must be proven by a preponderance of the evidence; that is, you must find that the evidence is more likely true than not true. This is a lower standard of proof than proof beyond a reasonable doubt. If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proven by a preponderance of the evidence, then you must disregard such evidence.

Remember, even if you find that the defendant may have committed other acts in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed other acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of "other acts" only on the issue of his intent, knowledge or the absence of mistake or accident.

INSTRUCTION NUMBER 9

The value of identification testimony depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later.

In evaluating such testimony you should consider all of the factors mentioned in these instructions concerning your assessment of the credibility of any witness, and you should also consider, in particular, whether the witness had an adequate opportunity to observe the person in question at the time of the offense. You may consider, in that regard, such matters as the length of time the witness had to observe the person in question, the prevailing conditions at that time in terms of visibility or distance and the like, and whether the witness had known or observed the person at earlier times.

You should also consider whether the identification made by the witness after the offense was the product of his or her own recollection. You may consider, in that regard, the strength of the identification, and the circumstances under which the identification was made, and the length of time that elapsed between the occurrence of the crime and the next opportunity the witness had to see the defendant.

The government has the burden of proving identity beyond a reasonable doubt. It is not essential that the witness be free from doubt as to the correctness of the identification. However you, the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may find him guilty. If you are not convinced beyond a reasonable doubt that the defendant was the person who committed the crime, you must find the defendant not guilty.

INSTRUCTION NUMBER 10

You have heard testimony that the defendant made statements to certain witnesses in this case. It is for you to decide:

- (1) whether the defendant made the statements and
- (2) if so, how much weight you should give to them.

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NUMBER 11

You have heard audio recordings of conversations. These conversations were legally recorded, and you may consider the recordings just like any other evidence.

INSTRUCTION NUMBER 12

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state his or her opinions 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 NUMBER 13

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 NUMBER 14

The Indictment in this case charges the defendant with four separate crimes. It charges that he conspired to distribute heroin, distributed heroin to a minor and twice distributed heroin. The defendant has pleaded not guilty to the crimes with which he is charged.

As I told you at the beginning of 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 a defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential 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 the defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

INSTRUCTION NUMBER 15

Count 1 of the Indictment charges the defendant with conspiring to distribute heroin.

This offense has three essential elements, which are:

- One,* between about February of 2004 and continuing through August of 2004, two or more persons reached an agreement or came to an understanding to distribute a mixture or substance containing a detectable amount of heroin;
- 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 or understanding.

To assist you in determining whether there was an agreement or understanding to commit the crime of distributing heroin, you are advised that the elements of the crime of distributing heroin are set out in Instruction Number 18.

If you unanimously find each of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1; otherwise you must find the defendant not guilty of the crime charged under Count 1.

INSTRUCTION NUMBER 16

In determining whether the defendant is guilty of the offense charged in Count 1, the government is not required to prove that the amount or quantity of controlled substances was as charged in the Indictment. The government needs only prove beyond a reasonable doubt that there was some measurable amount of controlled substance involved.

The quantity of controlled substances involved in the agreement or understanding includes the controlled substances the defendant possessed for personal use or distributed or agreed to distribute. The quantity also includes the controlled substances fellow conspirators distributed or agreed to distribute, if you find that those distributions or agreements to distribute were a necessary consequence of the agreement or understanding and were reasonably foreseeable by the defendant.

INSTRUCTION NUMBER 17

As to Count 1, the government is not required to prove that the conspiracy existed during the entire period of time alleged in the Indictment, or that the defendant was a member of the conspiracy for the entire period of time alleged in the Indictment. What the evidence must show is that a conspiracy existed, and that the defendant joined in the conspiracy at some time during the period alleged in the Indictment.

INSTRUCTION NUMBER 18

With regard to the object of Count 1 of the Indictment, you are instructed that the crime of distributing a controlled substance has two essential elements, which are:

One, intentional transfer of a controlled substance by a person; and

Two, who, at the time of the transfer, knew that it was a controlled substance.

Keep in mind that Count 1 of the Indictment charges a *conspiracy* to commit distribution of a controlled substance and does not require the government to prove that distribution of a controlled substance was actually committed.

INSTRUCTION NUMBER 19

In considering whether the government has met its burden of proving the offense of conspiracy as alleged in Count 1 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. The "other person" cannot be a confidential informant. It makes no difference whether that person is a defendant or named in the Indictment.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely being associated 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.

You must decide, after considering all of the evidence, whether the conspiracy alleged in Count 1 of the Indictment existed. If you find that an 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

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INSTRUCTION NUMBER 19 (Cont'd)

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 NUMBER 20

If you find beyond a reasonable doubt that the conspiracy in Count 1 of the Indictment existed and that the defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by the 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 joined the conspiracy, because 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 NUMBER 21

Count 2 charges the defendant with distribution of heroin to a person who is under the age of twenty-one. This offense has four essential elements, which are:

One, during about February of 2004 and continuing through about August of 2004, the defendant intentionally transferred heroin to [REDACTED]

Two, the defendant was at least 18 years of age at the time of the transfer;

Three, [REDACTED] was under 21 years of age at the time of the transfer; and

Four, at the time of the transfer, the defendant knew that it was heroin.

If you unanimously find each of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 2; otherwise you must find the defendant not guilty of the crime charged under Count 2.

INSTRUCTION NUMBER 22

Counts 3 and 4 of the Indictment charge the defendant with distribution of heroin.

This offense has two essential elements, which are:

- One,* on or about March 22, 2004 (Count 3) or March 30, 2004 (Count 4), the defendant intentionally transferred heroin to [REDACTED], and
- Two,* at the time of the transfer, the defendant knew that it was heroin.

If all of the essential elements have been proved beyond a reasonable doubt as to the count under consideration by you, then you must find the defendant guilty of that count; otherwise you must find the defendant not guilty of the count under consideration by you.

INSTRUCTION NUMBER 23

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 NUMBER 24

You are instructed as a matter of law that heroin is a Schedule I controlled substance. You must ascertain whether or not the substances in question in Counts 1, 2, 3 and 4 were mixtures or substances containing a detectable amount of heroin. In so doing, you may consider all evidence in the case which may aid in the determination of that issue.

In determining whether the defendant is guilty of the offenses charged under Counts 1, 2, 3 and 4, the government is not required to prove that the amount or quantity of the heroin was as charged in the Indictment. The government need only prove beyond a reasonable doubt that there was some measurable amount of heroin involved.

INSTRUCTION NUMBER 25

You will note the Indictment charges that the offenses were committed “between about,” “during about” and “on or 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 NUMBER 26

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 NUMBER 27

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 NUMBER 28

An act is done "knowingly" if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. 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 NUMBER 29

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 NUMBER 30

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 a verdict—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 the 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 marshal or 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 NUMBER 30 (Cont'd)

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

INSTRUCTION NUMBER 31

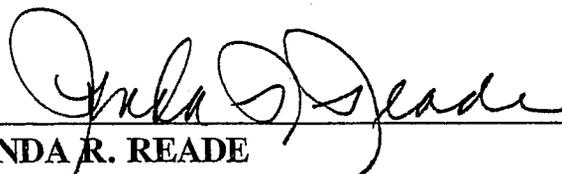
Attached to these instructions you will find Verdict Forms. These Verdict Forms are simply the written notice of the decisions that you reach in this case. The answers to these Verdict Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on answers to the Verdict Forms, your foreperson will fill out the Verdict Forms, sign and date them and advise the marshal or 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 such verdicts as accords with the evidence and these instructions.

April 11, 2007

DATE



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

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OMORO CRUSOE,

Defendant.

No. 05-CR-71-LRR

VERDICT FORM - COUNT 1

We, the jury, unanimously find the defendant, Omoro Crusoe, _____
Not Guilty / Guilty
of the crime charged in Count 1 of the Indictment.

Note: If you unanimously find the defendant not guilty of
Count 1, have your foreperson write "not guilty" in the above
blank space and sign and date the Verdict Form.

If you unanimously find the defendant guilty of Count 1, have
your foreperson write "guilty" in the above blank space and
sign and date the Verdict Form.

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OMORO CRUSOE,

Defendant.

No. 05-CR-71-LRR

VERDICT FORM - COUNT 2

We, the jury, unanimously find the defendant, Omoro Crusoe, _____
Not Guilty / Guilty
of the crime charged in Count 2 of the Indictment.

Note: If you unanimously find the defendant not guilty of
Count 2, have your foreperson write "not guilty" in the above
blank space and sign and date the Verdict Form.

If you unanimously find the defendant guilty of Count 2, have
your foreperson write "guilty" in the above blank space and
sign and date the Verdict Form.

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OMORO CRUSOE,

Defendant.

No. 05-CR-71-LRR

VERDICT FORM - COUNT 3

We, the jury, unanimously find the defendant, Omoro Crusoe, _____
Not Guilty / Guilty
of the crime charged in Count 3 of the Indictment.

Note: If you unanimously find the defendant not guilty of Count 3, have your foreperson write "not guilty" in the above blank space and sign and date the Verdict Form.

If you unanimously find the defendant guilty of Count 3, have your foreperson write "guilty" in the above blank space and sign and date the Verdict Form.

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OMORO CRUSOE,

Defendant.

No. 05-CR-71-LRR

VERDICT FORM - COUNT 4

We, the jury, unanimously find the defendant, Omoro Crusoe, _____

Not Guilty / Guilty

of the crime charged in Count 4 of the Indictment.

Note: If you unanimously find the defendant not guilty of Count 4, have your foreperson write "not guilty" in the above blank space and sign and date the Verdict Form.

If you unanimously find the defendant guilty of Count 4, have your foreperson write "guilty" in the above blank space and sign and date the Verdict Form.

FOREPERSON

DATE