

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL THOMAS GATENA and  
CARLA GRACE ENGLER,

Defendants.

No. CR 05-1021-LRR

**FINAL JURY INSTRUCTIONS**

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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 \_\_\_\_\_**

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

**INSTRUCTION NUMBER \_\_\_\_\_**

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 \_\_\_\_\_**

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 \_\_\_\_\_**

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, the stipulations of the parties 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. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.
2. Statements, arguments, questions and comments by the lawyers are 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 of the courtroom is not evidence.

During the trial, documents, such as transcripts of prior court proceedings, witness statements and law enforcement reports were referred to but they were not admitted into evidence and, therefore, the documents will not be available to you in the jury room during deliberations.

**INSTRUCTION NUMBER \_\_\_\_\_**

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.

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The government and the defendants have stipulated – that is, they have agreed – that certain facts are as counsel have stated. You must, therefore, treat those facts as having been proved.

**INSTRUCTION NUMBER \_\_\_\_\_**

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

**INSTRUCTION NUMBER \_\_\_\_\_**

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 Mike Beckett, Tonya Jo Burcham, Dan Ernzen and Nicole Leick have received promises from the government that their testimony in this case will not be used against them in a criminal case. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the government’s promise is for you to determine.

You have heard testimony from Eddie Breedwell, Marty Jungers, Jodie McAtee, Thomas Schaller and Josh Thomas. These witnesses 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 he or she provided substantial assistance, that prosecutor can file in the court in which the charges were brought against the witness, a motion to reduce his or her sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting

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**INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)**

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 Eddie Breedwell, Marty Jungers, Jodie McAtee, Thomas Schaller and Josh Thomas was received in evidence and may be considered by you. You may give the testimony of these witnesses such weight as you think it deserves. Whether or not a witness's testimony may have been influenced by his or her hope of receiving a reduced sentence is for you to decide.

You have heard evidence that witnesses Mike Beckett, Eddie Breedwell, Tonya Jo Burcham, Dan Erzen, Marty Jungers, Nicole Leick, Jodie McAtee, John McAtee, Thomas Schaller, Josh Thomas, Michael Thomas Gatena and Steve Fath were once convicted of a crime. You may use that evidence only to help you decide whether to believe these witnesses and how much weight to give their testimony.

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

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As you know, there are two defendants on trial here: Michael Thomas Gatena and Carla Grace Engler. Each defendant is entitled to have his or her case decided solely on the evidence which applies to him or her. Some of the evidence in this case is limited under the rules of evidence to one of the defendants, and cannot be considered against the other.

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You have heard testimony that the defendants made statements to law enforcement officers in this case. It is for you to decide: (1) whether the defendants made the statements and, (2) if so, how much weight you should give them. In making these two decisions, you should consider all of the evidence, including the circumstances under which the statements were made.

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You have heard a certain category of evidence called “other acts” evidence. Here you have heard evidence that Carla Grace Engler has a prior felony drug conviction and was involved with methamphetamine and methamphetamine precursors at times other than those charged in the Indictment. You may not use this “other acts” evidence to decide whether Carla Grace Engler 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 Carla Grace Engler carried out the acts involved in one or more crimes charged in the Indictment. If you make this finding, then you may consider the “other acts” evidence to decide Carla Grace Engler’s intent and knowledge. “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 Carla Grace Engler may have committed other acts in the past, this is not evidence that she committed such an act in this case. You may not convict a person simply because you believe she may have committed other acts in the past. Carla Grace Engler is on trial only for the crimes charged, and you may consider the evidence of “other acts” only on the issue of her intent and knowledge.

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You have also heard “other acts” evidence that Michael Thomas Gatena was involved with methamphetamine and methamphetamine precursors at times other than those charged in the Indictment. You may not use this “other acts” evidence to decide whether Michael Thomas Gatena 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 Michael Thomas Gatena carried out the acts involved in one or more crimes charged in the Indictment. If you make this finding, then you may consider the “other acts” evidence to decide Michael Thomas Gatena’s intent and knowledge. “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 Michael Thomas Gatena 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. Michael Thomas Gatena is on trial only for the crimes charged, and you may consider the evidence of “other acts” only on the issue of his intent and knowledge.

**INSTRUCTION NUMBER \_\_\_\_\_**

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 opinions on matters in that field and may also state the reasons for his 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 \_\_\_\_\_**

The intentional flight of a defendant after she is accused of a crime that has been committed, is not, of course, sufficient in and of itself to establish her guilt, but is a fact which, if proved, may be considered by you in light of all other evidence in the case, in determining guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within the province of the jury.

In your consideration of the evidence of flight, you should consider that there may be reasons for this which are fully consistent with innocence. These may include fear of being apprehended, unwillingness to confront the police or reluctance to appear as a witness.

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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 \_\_\_\_\_**

The Indictment in this case charges Michael Thomas Gatena in Counts 1, 2, 3, and 5 and Carla Grace Engler in Counts 1, 3, 4 and 5. Each count charges a separate offense.

Under Count 1, the Indictment charges that between about 2004 and June 2005, Michael Thomas Gatena, while on pretrial release, and Carla Grace Engler did knowingly and unlawfully combine, conspire, confederate and agree with each other and others known and unknown, to manufacture 50 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance, within 1,000 feet of the real property comprising Holy Ghost Catholic Grade School in Dubuque, Iowa.

Under Count 2, the Indictment charges that on or about November 17 and 18, 2004, Michael Thomas Gatena did knowingly and intentionally attempt to manufacture, and aid and abet the attempt to manufacture, 50 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance.

Under Count 3, the Indictment charges that on or about December 30, 2004, Michael Thomas Gatena and Carla Grace Engler did knowingly and intentionally attempt to manufacture, and aid and abet the attempt to manufacture, 50 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance, within 1,000 feet of the real property comprising Holy Ghost Catholic Grade School in Dubuque, Iowa.

Under Count 4, the Indictment charges that on or about January 30, 2005, Carla Grace Engler did knowingly and intentionally possess red phosphorus, a List I chemical, knowing and having reasonable cause to believe that the red phosphorus would be used to manufacture methamphetamine, a Schedule II controlled substance.

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**INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)**

Under Count 5, the Indictment charges that on or about June 4 and 5, 2005, Michael Thomas Gatena, while on pretrial release, and Carla Grace Engler did knowingly and intentionally attempt to manufacture, and aid and abet the attempt to manufacture, 5 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance, within 1,000 feet of the real property comprising Holy Ghost Catholic Grade School in Dubuque, Iowa.

Each defendant has pled not guilty to each crime with which he or she 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 defendants are presumed to be innocent. Thus the defendants, even though charged, begin the trial with no evidence against them. The presumption of innocence alone is sufficient to find the defendants 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 you must give separate consideration to the evidence about each individual defendant. Each defendant is entitled to be treated separately, and you must return a separate verdict for each defendant. Also keep in mind that you must consider, separately, each crime charged against each individual defendant, and must return a separate verdict for each of those crimes charged.

There is no burden upon the defendants to prove that they are innocent. Accordingly, the fact that a defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

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Count 1 of the Indictment charges Michael Thomas Gatena and Carla Grace Engler with conspiring to manufacture actual (pure) methamphetamine within 1,000 feet of the real property comprising a school. The crime of conspiracy has three essential elements, which are:

- One,*           between about 2004 and June 2005, two or more persons reached an agreement or came to an understanding to manufacture actual (pure) methamphetamine, a Schedule II controlled substance;
  
- Two,*           the defendant under consideration by you 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 under consideration by you joined in the agreement or understanding, he or she knew the purpose of the agreement or understanding.

To find the defendant under consideration by you guilty of conspiracy, the government must prove all of these essential elements beyond a reasonable doubt. If the government failed to prove any essential element beyond a reasonable doubt, then you must find the defendant under consideration by you not guilty of conspiracy as charged in Count 1.

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To assist you in determining whether there was an agreement or understanding to manufacture actual (pure) methamphetamine within 1,000 feet of the real property comprising a school, you are advised that the elements of the crime of manufacturing a controlled substance within 1,000 feet of the real property comprising a school are:

- One,* a person manufactured actual (pure) methamphetamine, a Schedule II controlled substance;
- Two,* the person knew he or she was manufacturing and intended to manufacture a controlled substance; and
- Three,* the offense took place or was to take place within 1,000 feet of the real property comprising a school.

Keep in mind that Count 1 of the Indictment charges a conspiracy to commit the charged offense and does not require the government to prove that the crime of manufacturing actual (pure) methamphetamine was actually committed.

**INSTRUCTION NUMBER \_\_\_\_\_**

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 under consideration by you 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, be in writing or cover all the details of how it is to be carried out. Nor is it necessary that 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 NUMBER \_\_\_\_ (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 under consideration by you 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 that 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 that defendant.

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If you find beyond a reasonable doubt that a conspiracy existed and that the defendant under consideration by you was one of its members, then you may consider acts knowingly done and statements knowingly made by that defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to that defendant even though they were done or made in the absence of and without the knowledge of that defendant. This includes acts done or statements made before that 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 \_\_\_\_\_**

Count 2 of the Indictment charges Michael Thomas Gatena with attempting to manufacture and aiding and abetting the attempt to manufacture actual (pure) methamphetamine. You may find Michael Thomas Gatena guilty of Count 2 under one of the following alternative theories: (1) personally attempting to manufacture actual (pure) methamphetamine or (2) aiding and abetting the attempt to manufacture actual (pure) methamphetamine.

***Alternative I - Personally Attempting to Manufacture  
Actual (Pure) Methamphetamine***

The offense of attempting to manufacture actual (pure) methamphetamine has three essential elements, which are:

- One,* on or about November 17 and 18, 2004, Michael Thomas Gatena attempted to manufacture actual (pure) methamphetamine, a Schedule II controlled substance;
- Two,* Michael Thomas Gatena knew that the material he intended to manufacture was a controlled substance, i.e., actual (pure) methamphetamine; and
- Three,* Michael Thomas Gatena voluntarily and intentionally carried out some act that was a substantial step toward manufacturing actual (pure) methamphetamine.

To find Michael Thomas Gatena guilty of personally attempting to manufacture actual (pure) methamphetamine, the government must prove all of these essential elements beyond a reasonable doubt. If the government failed to prove any essential element

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INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)

beyond a reasonable doubt, then you must find Michael Thomas Gatena not guilty of personally attempting to manufacture actual (pure) methamphetamine.

*Alternative II - Aiding and Abetting the Attempt to Manufacture Actual (Pure) Methamphetamine*

Michael Thomas Gatena may be found guilty of attempting to manufacture actual (pure) methamphetamine even if he personally did not do every act constituting the offense charged, if he aided and abetted the attempt to manufacture actual (pure) methamphetamine.

The crime of aiding and abetting the attempt to manufacture actual (pure) methamphetamine has two essential elements, which are:

- One,* on or about November 17 and 18, 2004, Michael Thomas Gatena knew the attempt to manufacture actual (pure) methamphetamine was being committed or was going to be committed; and
- Two,* Michael Thomas Gatena knowingly acted in some way for the purpose of causing, encouraging or aiding the commission of the attempt to manufacture actual (pure) methamphetamine.

To find Michael Thomas Gatena guilty of attempting to manufacture a controlled substance by reason of aiding and abetting, the government must prove, beyond a reasonable doubt, that all of these essential elements of attempting to manufacture a controlled substance were committed by some person or persons and that Michael Thomas Gatena aided and abetted the commission of that crime. If the government failed to prove any essential element beyond a reasonable doubt, then you must find Michael Thomas

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**INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)**

Gatena not guilty of aiding and abetting the attempt to manufacture actual (pure) methamphetamine as charged in Count 2 of 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 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.

**INSTRUCTION NUMBER \_\_\_\_\_**

Counts 3 and 5 of the Indictment charge Michael Thomas Gatena and Carla Grace Engler with attempting to manufacture or aiding and abetting the attempt to manufacture actual (pure) methamphetamine within 1,000 feet of the real property comprising a school. You may find the defendant under consideration by you guilty of Count 3 and/or Count 5 under one of the following alternative theories: (1) personally attempting to manufacture actual (pure) methamphetamine or (2) aiding and abetting the attempt to manufacture actual (pure) methamphetamine.

***Alternative I - Personally Attempting to Manufacture  
Actual (Pure) Methamphetamine***

The offense of attempting to manufacture actual (pure) methamphetamine has three essential elements, which are:

- One,* on or about December 30, 2004 (Count 3), and/or on or about June 4 and 5, 2005 (Count 5), the defendant under consideration by you attempted to manufacture actual (pure) methamphetamine, a Schedule II controlled substance;
- Two,* the defendant under consideration by you knew that the material he or she intended to manufacture was a controlled substance, i.e., actual (pure) methamphetamine; and
- Three,* the defendant under consideration by you voluntarily and intentionally carried out some act that was a substantial step toward manufacturing actual (pure) methamphetamine.

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**INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)**

To find the defendant under consideration by you guilty of personally attempting to manufacture actual (pure) methamphetamine, the government must prove all of these essential elements beyond a reasonable doubt. If the government failed to prove any essential element beyond a reasonable doubt, then you must find the defendant under consideration by you not guilty of personally attempting to manufacture actual (pure) methamphetamine.

***Alternative II - Aiding and Abetting the Attempt to Manufacture Actual (Pure) Methamphetamine***

Michael Thomas Gatena and Carla Grace Engler may be found guilty of attempting to manufacture actual (pure) methamphetamine under Counts 3 and/or 5, even if he or she personally did not do every act constituting the offense charged, if he or she aided and abetted the attempt to manufacture actual (pure) methamphetamine.

The crime of aiding and abetting the attempt to manufacture actual (pure) methamphetamine has two essential elements, which are:

- One,* on or about December 30, 2004 (Count 3) and/or on or about June 4 and 5, 2005 (Count 5), the defendant under consideration by you knew the attempt to manufacture actual (pure) methamphetamine was being committed or was going to be committed; and
- Two,* the defendant under consideration by you knowingly acted in some way for the purpose of causing, encouraging or aiding the commission of the attempt to manufacture actual (pure) methamphetamine.

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**INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)**

To find the defendant under consideration by you guilty of attempting to manufacture a controlled substance by reason of aiding and abetting, the government must prove, beyond a reasonable doubt, that all of these essential elements of attempting to manufacture actual (pure) methamphetamine were committed by some person or persons and that the defendant under consideration by you aided and abetted the commission of that crime. If the government failed to prove any essential element beyond a reasonable doubt, then you must find the defendant under consideration by you not guilty of aiding and abetting the attempt to manufacture actual (pure) methamphetamine.

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.

**INSTRUCTION NUMBER \_\_\_\_\_**

Count 4 of the Indictment charges Carla Grace Engler with possessing red phosphorus knowing or having reasonable cause to believe that the red phosphorus would be used to manufacture methamphetamine. This offense has two essential elements, which are:

- One,* on or about January 30, 2005, Carla Grace Engler knowingly possessed red phosphorus, a List I chemical; and
- Two,* Carla Grace Engler knew or had reasonable cause to believe that the red phosphorus would be used to manufacture a controlled substance, to wit: methamphetamine.

To find Carla Grace Engler guilty of possessing red phosphorus knowing and having reasonable cause to believe that the red phosphorus would be used to manufacture methamphetamine, the government must prove these two essential elements beyond a reasonable doubt. If the government failed to prove any essential element beyond a reasonable doubt, then you must find Carla Grace Engler not guilty of Count 4.

**INSTRUCTION NUMBER \_\_\_\_\_**

You are instructed as a matter of law that methamphetamine and actual (pure) methamphetamine are Schedule II controlled substances. You are instructed as a matter of law that red phosphorus is a List I chemical. You must ascertain whether or not the substances in question in Counts 1, 2, 3 and 5 were actual (pure) methamphetamine and whether the substance in question in Count 4 was red phosphorus. In so doing, you may consider all the evidence in the case which may aid in the determination of that issue.

In considering whether the government has met its burden of proving the crimes charged in Counts 1, 2, 3 and 5 of the Indictment, you are further instructed as follows:

In determining whether the defendant under consideration by you is guilty of conspiring to manufacture, attempting to manufacture or aiding and abetting the attempt to manufacture actual (pure) methamphetamine as charged in Counts 1, 2, 3 and 5, the government is not required to prove that the amount or quantity of the controlled substance was as charged in the Indictment. The government need only prove beyond a reasonable doubt that there was a measurable amount of the controlled substance.

However, if you find Michael Thomas Gatena and/or Carla Grace Engler guilty of the offense of conspiring to manufacture actual (pure) methamphetamine as charged in Count 1, you will need to determine whether the quantity of actual (pure) methamphetamine involved in the offense was 50 grams or more; 5 grams or more but less than 50 grams; or less than 5 grams. The quantity of controlled substances involved in the conspiracy includes the controlled substances the defendant under consideration by you personally manufactured or manufactured via aiding and abetting. The quantity also

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**INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)**

includes the controlled substances fellow conspirators manufactured, if you find that the manufacturing effort was a necessary or natural consequence of the agreement or understanding and was reasonably foreseeable by the defendant under consideration by you.

If you find Michael Thomas Gatena guilty of the offense of attempting to manufacture or aiding and abetting the attempt to manufacture actual (pure) methamphetamine as charged in Count 2, you will need to determine whether the quantity of actual (pure) methamphetamine involved in the offense was 50 grams or more; 5 grams or more but less than 50 grams; or less than 5 grams.

If you find Michael Thomas Gatena and/or Carla Grace Engler guilty of the offense of attempting to manufacture or aiding and abetting the attempt to manufacture actual (pure) methamphetamine as charged in Count 3, you will need to determine whether the quantity of actual (pure) methamphetamine involved in the offense was 50 grams or more; 5 grams or more but less than 50 grams; or less than 5 grams.

If you find Michael Thomas Gatena and/or Carla Grace Engler guilty of the offense of attempting to manufacture or aiding and abetting the attempt to manufacture actual (pure) methamphetamine as charged in Count 5, you will need to determine whether the quantity of actual (pure) methamphetamine involved in the offense was either 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 contains 1,000 milligrams, one ounce

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**INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)**

equals 28.35 grams, one pound equals 453.6 grams and one kilogram contains 1,000 grams.

When computing the amount of actual (pure) methamphetamine, exclude from your calculation the weight of all impurities, waste, by products or cutting agents.

**INSTRUCTION NUMBER \_\_\_\_\_**

The crimes charged in Counts 2, 3 and 5 of the Indictment are attempting to manufacture actual (pure) methamphetamine or aiding and abetting the attempt to manufacture actual (pure) methamphetamine. As previously instructed, a person may be found guilty of attempting to manufacture actual (pure) methamphetamine if he or she intended to manufacture actual (pure) methamphetamine and voluntarily and intentionally carried out some act which was a substantial step toward the manufacture.

A substantial step must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer, viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute. Crimes such as attempt to manufacture actual (pure) methamphetamine require a defendant to engage in numerous preliminary steps which brand the enterprise as criminal.

**INSTRUCTION NUMBER \_\_\_\_\_**

In Count 1, the government claims the defendants conspired to manufacture actual (pure) methamphetamine and that the manufacturing was to occur within 1,000 feet of the real property comprising Holy Ghost Catholic Grade School in Dubuque, Iowa. In Counts 3 and 5, the government claims the attempt to manufacture actual (pure) methamphetamine occurred, was to occur or was attempted within 1,000 feet of the real property comprising Holy Ghost Catholic Grade School in Dubuque, Iowa.

In determining whether an offense occurred or was to occur within 1,000 feet of the real property comprising a school, the 1,000 foot zone can be measured in a straight line from the school, irrespective of actual pedestrian travel routes. The government does not have to prove that the defendant under consideration by you agreed, knew or intended that the offense would take place within 1,000 feet of the school.

**INSTRUCTION NUMBER \_\_\_\_\_**

In the event that you unanimously find, beyond a reasonable doubt, Michael Thomas Gatena guilty of conspiring to manufacture actual (pure) methamphetamine under Count 1 and/or attempting to manufacture or aiding and abetting the attempt to manufacture actual (pure) methamphetamine under Count 5, you must determine whether Michael Thomas Gatena committed these offenses while he was on pretrial release.

**INSTRUCTION NUMBER \_\_\_\_\_**

“Possession” is an element of the offense charged in Count 4. 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 in actual possession of it.

A person who, although not in actual possession, has both the power and intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is 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” is used in these instructions, it includes “actual” as well as “constructive” possession and also “sole” as well as “joint” possession.

**INSTRUCTION NUMBER \_\_\_\_\_**

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 previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

**INSTRUCTION NUMBER \_\_\_\_\_**

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 \_\_\_\_\_**

An act is done “knowingly” if the defendant under consideration by you realized what he or she was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant under consideration by you knew that his or her acts or omissions were unlawful. You may consider the evidence of the defendant’s acts and words, along with all other evidence, in deciding whether the defendant under consideration by you acted knowingly.

**INSTRUCTION NUMBER \_\_\_\_\_**

You will note the Indictment charges that offenses were committed “between about” or “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 \_\_\_\_\_**

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 \_\_\_\_\_**

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 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.

**(CONTINUED)**

**INSTRUCTION NUMBER \_\_\_\_\_ (Cont'd)**

*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.

*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 \_\_\_\_\_**

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 them out, 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 accord with the evidence and these instructions.

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**DATE**

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**LINDA R. READE  
JUDGE, U. S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL THOMAS GATENA and  
CARLA GRACE ENGLER,

Defendants.

No. CR 05-1021-LRR

**VERDICT FORM COUNT 1 -  
MICHAEL THOMAS GATENA**

---

We, the Jury, find the defendant, Michael Thomas Gatena, \_\_\_\_\_ of  
Not Guilty / Guilty  
the crime of conspiracy to manufacture actual (pure) methamphetamine as charged in  
Count 1 of the Indictment.

Note: If you unanimously find Michael Thomas Gatena guilty of Count 1, have your foreperson write “guilty” in the above blank space, sign and date this Verdict Form.

If you unanimously find Michael Thomas Gatena not guilty of Count 1, have your foreperson write “not guilty” in the above blank space, sign and date this Verdict Form.

If you found Michael Thomas Gatena guilty of conspiracy as charged in Count 1 of the Indictment, please answer Questions 1, 2 and 3:

**Question 1:** Do you unanimously find, beyond a reasonable doubt, that the object of the conspiracy in Count 1 of the Indictment was to manufacture actual (pure) methamphetamine within 1,000 feet of the real property comprising a school, that is, Holy Ghost Catholic Grade School in Dubuque, Iowa?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

**Question 2:** Put a (✓) mark before the quantity of actual (pure) methamphetamine you unanimously find, beyond a reasonable doubt, was involved in Count 1 of the Indictment.

\_\_\_\_\_ 50 grams or more of actual (pure) methamphetamine

\_\_\_\_\_ 5 grams or more but less than 50 grams of actual (pure) methamphetamine

\_\_\_\_\_ less than 5 grams of actual (pure) methamphetamine

**Question 3:** Do you unanimously find, beyond a reasonable doubt, that Michael Thomas Gatena committed the offense charged in Count 1 of the Indictment while he was on pretrial release?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL THOMAS GATENA and  
CARLA GRACE ENGLER,

Defendants.

No. CR 05-1021-LRR

**VERDICT FORM COUNT 1 - CARLA  
GRACE ENGLER**

---

We, the Jury, find the defendant, Carla Grace Engler, \_\_\_\_\_ of  
Not Guilty / Guilty  
the crime of conspiracy to manufacture actual (pure) methamphetamine as charged in  
Count 1 of the Indictment.

Note: If you unanimously find Carla Grace Engler guilty of  
Count 1, have your foreperson write "guilty" in the above  
blank space, sign and date this Verdict Form.

If you unanimously find Carla Grace Engler not guilty of  
Count 1, have your foreperson write "not guilty" in the above  
blank space, sign and date this Verdict Form.

If you found Carla Grace Engler guilty of conspiracy as charged in Count 1 of the Indictment, please answer Questions 1 and 2:

**Question 1:** Do you unanimously find, beyond a reasonable doubt, that the object of the conspiracy in Count 1 of the Indictment was to manufacture actual (pure) methamphetamine within 1,000 feet of the real property comprising a school, that is, Holy Ghost Catholic Grade School in Dubuque, Iowa?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

**Question 2:** Put a (✓) mark before the quantity of actual (pure) methamphetamine you unanimously find, beyond a reasonable doubt, was involved in Count 1 of the Indictment.

\_\_\_\_\_ 50 grams or more of actual (pure) methamphetamine

\_\_\_\_\_ 5 grams or more but less than 50 grams of actual (pure) methamphetamine

\_\_\_\_\_ less than 5 grams of actual (pure) methamphetamine

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL THOMAS GATENA and  
CARLA GRACE ENGLER,

Defendants.

No. CR 05-1021-LRR

**VERDICT FORM COUNT 2 -  
MICHAEL THOMAS GATENA**

---

We, the Jury, find the defendant, Michael Thomas Gatena, \_\_\_\_\_ of  
Not Guilty / Guilty  
the crime of attempting to manufacture or aiding and abetting the attempt to manufacture  
actual (pure) methamphetamine as charged in Count 2 of the Indictment.

Note: If you unanimously find Michael Thomas Gatena guilty of Count 2, have your foreperson write “guilty” in the above blank space, sign and date this Verdict Form.

If you unanimously find Michael Thomas Gatena not guilty of Count 2, have your foreperson write “not guilty” in the above blank space, sign and date this Verdict Form.

If you found Michael Thomas Gatena guilty of attempting to manufacture or aiding and abetting the attempt to manufacture actual (pure) methamphetamine as charged in Count 2 of the Indictment, please answer Question 1:

**Question 1:** Put a (✓) mark before the quantity of actual (pure) methamphetamine you unanimously find, beyond a reasonable doubt, was involved in Count 2 of the Indictment.

\_\_\_\_\_ 50 grams or more of actual (pure) methamphetamine

\_\_\_\_\_ 5 grams or more but less than 50 grams of actual (pure) methamphetamine

\_\_\_\_\_ less than 5 grams of actual (pure) methamphetamine

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL THOMAS GATENA and  
CARLA GRACE ENGLER,

Defendants.

No. CR 05-1021-LRR

**VERDICT FORM COUNT 3 -  
MICHAEL THOMAS GATENA**

---

We, the Jury, find the defendant, Michael Thomas Gatena, \_\_\_\_\_ of  
Not Guilty / Guilty  
the crime of attempting to manufacture or aiding and abetting the attempt to manufacture  
actual (pure) methamphetamine as charged in Count 3 of the Indictment.

Note: If you unanimously find Michael Thomas Gatena guilty of Count 3, have your foreperson write “guilty” in the above blank space, sign and date this Verdict Form.

If you unanimously find Michael Thomas Gatena not guilty of Count 3, have your foreperson write “not guilty” in the above blank space, sign and date this Verdict Form.

If you found Michael Thomas Gatena guilty of attempting to manufacture or aiding and abetting the attempt to manufacture actual (pure) methamphetamine as charged in Count 3 of the Indictment, please answer Questions 1 and 2:

**Question 1:** Do you unanimously find, beyond a reasonable doubt, that the attempt to manufacture actual (pure) methamphetamine in Count 3 of the Indictment took place within 1,000 feet of the real property comprising a school, that is, Holy Ghost Catholic Grade School in Dubuque, Iowa?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

**Question 2:** Put a (✓) mark before the quantity of actual (pure) methamphetamine you unanimously find, beyond a reasonable doubt, was involved in Count 3 of the Indictment.

\_\_\_\_\_ 50 grams or more of actual (pure) methamphetamine

\_\_\_\_\_ 5 grams or more but less than 50 grams of actual (pure) methamphetamine

\_\_\_\_\_ less than 5 grams of actual (pure) methamphetamine

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL THOMAS GATENA and  
CARLA GRACE ENGLER,

Defendants.

No. CR 05-1021-LRR

**VERDICT FORM COUNT 3 - CARLA  
GRACE ENGLER**

---

We, the Jury, find the defendant, Carla Grace Engler, \_\_\_\_\_ of  
Not Guilty / Guilty  
the crime of attempting to manufacture or aiding and abetting the attempt to manufacture  
actual (pure) methamphetamine as charged in Count 3 of the Indictment.

Note: If you unanimously find Carla Grace Engler guilty of  
Count 3, have your foreperson write “guilty” in the above  
blank space, sign and date this Verdict Form.

If you unanimously find Carla Grace Engler not guilty of  
Count 3, have your foreperson write “not guilty” in the above  
blank space, sign and date this Verdict Form.

If you found Carla Grace Engler guilty of attempting to manufacture or aiding and abetting the attempt to manufacture actual (pure) methamphetamine as charged in Count 3 of the Indictment, please answer Questions 1 and 2:

**Question 1:** Do you unanimously find, beyond a reasonable doubt, that the attempt to manufacture actual (pure) methamphetamine in Count 3 of the Indictment took place within 1,000 feet of the real property comprising a school, that is, Holy Ghost Catholic Grade School in Dubuque, Iowa?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

**Question 2:** Put a (✓) mark before the quantity of actual (pure) methamphetamine you unanimously find, beyond a reasonable doubt, was involved in Count 3 of the Indictment.

\_\_\_\_\_ 50 grams or more of actual (pure) methamphetamine

\_\_\_\_\_ 5 grams or more but less than 50 grams of actual (pure) methamphetamine

\_\_\_\_\_ less than 5 grams of actual (pure) methamphetamine

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL THOMAS GATENA and  
CARLA GRACE ENGLER,

Defendants.

No. CR 05-1021-LRR

**VERDICT FORM COUNT 4 - CARLA  
GRACE ENGLER**

---

We, the Jury, find the defendant, Carla Grace Engler, \_\_\_\_\_ of  
Not Guilty / Guilty  
the crime of possessing red phosphorus knowing or having reasonable cause to believe it  
would be used to manufacture methamphetamine as charged in Count 4 of the Indictment.

Note: If you unanimously find Carla Grace Engler guilty of  
Count 4, have your foreperson write "guilty" in the above  
blank space, sign and date this Verdict Form.

If you unanimously find Carla Grace Engler not guilty of  
Count 4, have your foreperson write "not guilty" in the above  
blank space, sign and date this Verdict Form.

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL THOMAS GATENA and  
CARLA GRACE ENGLER,

Defendants.

No. CR 05-1021-LRR

**VERDICT FORM COUNT 5 -  
MICHAEL THOMAS GATENA**

---

We, the Jury, find the defendant, Michael Thomas Gatena, \_\_\_\_\_ of  
Not Guilty / Guilty  
the crime of attempting to manufacture or aiding and abetting the attempt to manufacture  
actual (pure) methamphetamine as charged in Count 5 of the Indictment.

Note: If you unanimously find Michael Thomas Gatena guilty of Count 5, have your foreperson write “guilty” in the above blank space, sign and date this Verdict Form.

If you unanimously find Michael Thomas Gatena not guilty of Count 5, have your foreperson write “not guilty” in the above blank space, sign and date this Verdict Form.

If you found Michael Thomas Gatena guilty of attempting to manufacture or aiding and abetting the attempt to manufacture actual (pure) methamphetamine as charged in Count 5 of the Indictment, please answer Questions 1, 2 and 3:

**Question 1:** Do you unanimously find, beyond a reasonable doubt, that the attempt to manufacture actual (pure) methamphetamine in Count 5 of the Indictment took place within 1,000 feet of the real property comprising a school, that is, Holy Ghost Catholic Grade School in Dubuque, Iowa?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

**Question 2:** Put a (✓) mark before the quantity of actual (pure) methamphetamine you unanimously find, beyond a reasonable doubt, was involved in Count 5 of the Indictment.

\_\_\_\_\_ 5 grams or more but less than 50 grams of actual (pure) methamphetamine

\_\_\_\_\_ less than 5 grams of actual (pure) methamphetamine

**Question 3:** Do you unanimously find, beyond a reasonable doubt, that Michael Thomas Gatena committed the offense charged in Count 5 of the Indictment while he was on pretrial release?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL THOMAS GATENA and  
CARLA GRACE ENGLER,

Defendants.

No. CR 05-1021-LRR

**VERDICT FORM COUNT 5 - CARLA  
GRACE ENGLER**

---

We, the Jury, find the defendant, Carla Grace Engler, \_\_\_\_\_ of  
Not Guilty / Guilty  
the crime of attempting to manufacture or aiding and abetting the attempt to manufacture  
actual (pure) methamphetamine as charged in Count 5 of the Indictment.

Note: If you unanimously find Carla Grace Engler guilty of  
Count 5, have your foreperson write “guilty” in the above  
blank space, sign and date this Verdict Form.

If you unanimously find Carla Grace Engler not guilty of  
Count 5, have your foreperson write “not guilty” in the above  
blank space, sign and date this Verdict Form.

If you found Carla Grace Engler guilty of attempting to manufacture or aiding and abetting the attempt to manufacture actual (pure) methamphetamine as charged in Count 5 of the Indictment, please answer Questions 1 and 2:

**Question 1:** Do you unanimously find, beyond a reasonable doubt, that the attempt to manufacture actual (pure) methamphetamine in Count 5 of the Indictment took place within 1,000 feet of the real property comprising a school, that is, Holy Ghost Catholic Grade School in Dubuque, Iowa?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

**Question 2:** Put a (✓) mark before the quantity of actual (pure) methamphetamine you unanimously find, beyond a reasonable doubt, was involved in Count 5 of the Indictment.

\_\_\_\_\_ 5 grams or more but less than 50 grams of actual (pure) methamphetamine

\_\_\_\_\_ less than 5 grams of actual (pure) methamphetamine

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE