

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIELA CASTELLANOS,
MARCOS PEREZ-TREVINO &
ALEJANDRO BECERRA,

Defendants.

No. 15-CR-2037-LRR

JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

In the next few moments, I am going to give you instructions about this case and about your duties as jurors. I will also give you additional instructions at a later time. Unless I specifically tell you otherwise, all instructions—both those I give you now and those I give you later—are equally binding on you and must be followed.

The instructions I am about to give you now are in writing and will be available to you in the jury room.

INSTRUCTION NO. 1

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

INSTRUCTION NO. 2

This is a criminal case, brought against the defendants by the United States government. The charges are set forth in what is called an Indictment.

The Indictment in this case charges the defendants with one crime, specifically that, beginning in about the spring of 2013, and continuing to August 26, 2015, in the Northern District of Iowa, the defendants conspired to distribute a mixture or substance containing a detectable amount of methamphetamine.

Each defendant has pleaded not guilty to the crime with which they are charged.

You are instructed that an Indictment is simply an accusation. It is not evidence of anything. Each defendant has pleaded not guilty, and is presumed to be innocent unless and until proven guilty beyond a reasonable doubt. Thus, each defendant begins the trial with a clean slate, with no evidence against him or her. The presumption of innocence alone is sufficient to find a defendant not guilty and can be overcome only if the government proves during the trial, beyond a reasonable doubt, each element of the crime 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.

There is no burden upon a defendant to prove that he or she is innocent. Accordingly, if a defendant does not testify, that fact must not be considered by you in any way, or even discussed, in arriving at your verdicts.

INSTRUCTION NO. 3

It will be your duty as jurors to decide from the evidence whether each defendant is guilty or not guilty of the crime charged. From the evidence, you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in my instructions. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

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.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdicts should be.

Finally, please remember that only these defendants, not anyone else, are on trial here, and that these defendants are on trial only for the crime charged, not for anything else.

INSTRUCTION NO. 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 that are established by the evidence in the case.

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

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge 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 sustain an objection to a question, you must ignore the question and must not try to guess what the answer might be.
4. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
5. The fact that an interpreter may be used in this trial is not evidence.
6. Anything you see or hear about this case outside the courtroom is not evidence.

During the trial, documents and objects may be referred to but not admitted into evidence. In such a case, these items will not be available to you in the jury room during deliberations.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you if this occurs, and instruct you on the purposes for which the item can and cannot be used.

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 witnesses 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 the testimony of each witness who testifies 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 says, or only part of it or none of it.

In deciding what testimony of any witness 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 other evidence that you believe.

In deciding whether 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.

If a defendant chooses to testify, you should judge that testimony in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 7

In the 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 that 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 may hear evidence that some witnesses were once convicted of a crime. If so, you may use that evidence only to help you decide whether you believe those witnesses and how much weight to give their testimony.

You may hear testimony from certain witnesses who state that they participated in the crime charged against the defendants. If so, their testimony would be 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 be influenced by their desire to please the government or to strike a bargain with the government with respect to their own situation will be for you to determine.

You may hear evidence that certain witnesses made plea agreements with the government. If so, their testimony may be 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 be influenced by the plea agreement will be for you to determine. A witness’s guilty plea cannot be considered by you as evidence of a defendant’s guilt. A witness’s guilty plea can be considered by you only for the purpose of determining how much to rely upon the witness’s testimony, if you choose to rely on it at all.

(CONTINUED)

INSTRUCTION NO. 7 (Cont'd)

You may hear evidence that certain witnesses hope to receive a reduced sentence on criminal charges pending against them in return for their cooperation with the government in this case. If the prosecutor handling a witness's case believes that the witness provided substantial assistance, that prosecutor can file a motion to reduce the witness's sentence in the court where the witness's charges are pending. 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. You may give the testimony of these witnesses such weight as you think it deserves. Whether or not their testimony may be influenced by their hopes of receiving a reduced sentence will be for you to determine.

INSTRUCTION NO. 8

You will hear testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept it 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. 9

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

You may also be provided with transcripts of these conversations. If so, the transcripts will undertake to identify the speakers engaged in the conversations. You will be permitted to view the transcripts for the limited purpose of helping you follow the conversations as you listen to the audio recordings, and also to help you keep track of the speakers. Differences in meaning between what you hear in the recordings and read in the transcripts may be caused by such things as the inflection in a speaker's voice. It is what you hear, however, and not what you read, that is the evidence.

You are specifically instructed that whether the transcript correctly or incorrectly reflect the conversation or the identities of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcripts, and upon your own examination of the transcripts in relation to what you will hear on the audio recordings. If you decide that the transcripts are in any respect incorrect or unreliable, you should disregard them to that extent.

INSTRUCTION NO. 10

Exhibits will be 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 you should leave the exhibits in the jury room in the same condition as they were received by you.

INSTRUCTION NO. 11

As you know, there are three defendants on trial in this case: Daniela Castellanos, Marcos Perez-Trevino and Alejandro Becerra—a/k/a Juan Flores.

Each defendant is entitled to have his or her case decided solely on the evidence which applies to him or her. You may consider some of the evidence in this case only against one defendant, and may not consider that evidence against the other defendants.

I will instruct you when evidence is admissible against only one defendant. You must not consider that evidence when you are deciding if the government has proved, beyond a reasonable doubt, its case against the other defendants.

INSTRUCTION NO. 12

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 13

The crime of conspiracy to distribute methamphetamine, as charged in the Indictment, has three elements, which are:

One, beginning in about the spring of 2013 and continuing to August 26, 2015, two or more persons reached an agreement or came to an understanding to distribute methamphetamine;

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.

For you to find a defendant guilty of this crime, the government must prove all of these elements beyond a reasonable doubt as to that defendant; otherwise, you must find that defendant not guilty.

To assist you in determining whether there was an agreement or understanding to commit the crime of distributing methamphetamine, you are advised that the elements of distributing methamphetamine are set forth in Instruction Number 16.

INSTRUCTION NO. 14

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

The government must prove, beyond a reasonable doubt, that the defendant under consideration by you reached an agreement or understanding with at least one other person. It makes no difference whether that other person is a defendant or named in the Indictment as long as you find beyond a reasonable doubt that there was at least one other co-conspirator. You do not have to find that all of the persons charged in the Indictment were members of the conspiracy.

The “agreement or understanding” need not be an express or formal agreement or in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members directly stated among 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 purposes 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. 14 (Cont'd)

You must decide, after hearing and 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 the defendant.

It is not necessary for the government to prove that the conspiracy actually succeeded.

INSTRUCTION NO. 15

If you find beyond a reasonable doubt that the conspiracy charged in the Indictment existed and that the defendant under consideration by you was a member, 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 the defendant under consideration by you, even though the acts were done or the statements were made in the absence of and without the knowledge of that defendant. This includes acts done or statements made before the defendant under consideration by you 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 NO. 16

To assist you in determining whether there was an agreement or understanding to distribute methamphetamine as charged in the Indictment, you are instructed that the crime of distributing methamphetamine has two elements, which are:

One, an individual intentionally transferred methamphetamine to another individual;
and

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

Remember that the Indictment charges a conspiracy to commit distribution of methamphetamine and does not require the government to prove that the crime of distribution of methamphetamine was actually committed.

INSTRUCTION NO. 17

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 payment for the delivery need exist; it is not necessary that money or anything of value change hands. The law is concerned with the act of distribution of a controlled substance and does not concern itself with any need for a “sale” to occur.

INSTRUCTION NO. 18

You are instructed as a matter of law that methamphetamine is a Schedule II controlled substance. During this trial, you may hear the terms “ice” and “a mixture or substance containing a detectable amount of methamphetamine.” You are instructed that “ice” and “a mixture or substance containing a detectable amount of methamphetamine” both refer to methamphetamine, but “ice” is a more pure form of methamphetamine. You must ascertain whether or not the substance in question was methamphetamine. In doing so, you may consider all of the evidence in the case that may aid in your determination of that issue.

With respect to the question of each defendant’s guilt for the offense charged in the Indictment, the government is not required to prove the amount or quantity of the controlled substance. The government need only prove beyond a reasonable doubt that there was a detectable amount of the controlled substance.

If you find Defendants Daniela Castellanos and/or Alejandro Becerra guilty of the offense charged in the Indictment, you need not ascertain the form or quantity of the methamphetamine with respect to them.

However, if you find Defendant Marcos Perez-Trevino guilty of the offense charged in the Indictment, you must proceed to determine the additional question of whether the substance in question with respect to him was a mixture of methamphetamine and/or pure methamphetamine.

If you determine that Defendant Marcos Perez-Trevino conspired to distribute a mixture of methamphetamine, you will need to determine whether the quantity of the mixture or substance containing a detectable amount of methamphetamine was: (1) 500 grams or more; (2) 50 grams or more, but less than 500 grams; or (3) less than 50 grams.

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INSTRUCTION NO. 18 (Cont'd)

If you determine that Defendant Marcos Perez-Trevino conspired to distribute pure methamphetamine, you will need to determine whether the quantity of pure methamphetamine was: (1) 50 grams or more; (2) 5 grams or more, but less than 50 grams; or (3) less than 5 grams.

The quantity of controlled substances involved in the agreement or understanding includes the controlled substances a 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 or natural consequence of the agreement or understanding and were reasonably foreseeable by the defendant.

When deciding the question of whether Defendant Marcos Perez-Trevino conspired to deliver certain forms or quantities of methamphetamine, the burden of proof is on the government to establish such facts beyond a reasonable doubt. For your information, one ounce equals 28.35 grams, one pound equals 453.6 grams and one kilogram equals 1,000 grams.

INSTRUCTION NO. 19

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

INSTRUCTION NO. 20

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. 21

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

INSTRUCTION NO. 22

At the end of the trial, you must make your decisions based on what you recall of the evidence. You will not have a written transcript to consult. Therefore, you must pay close attention to the testimony as it is given.

If you wish, you may take notes during the presentation of evidence to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. And do not let note-taking distract you so that you do not hear other answers by the witnesses.

During deliberations, 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.

Before we begin the evidence, we will give each juror an envelope with a pad and pen in it. The envelopes are numbered according to your seat in the jury box. When you leave for breaks or at night please put your pad and pen in the envelope and leave the envelope on your chair. Your notes will be secured, and they will not be read by anyone. At the end of trial and your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 23

During the trial, it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference while the jury is present in the courtroom or by calling a recess. If a bench conference is held in the courtroom, we will switch on what we refer to as “white noise” so that the jurors cannot hear what is being said by the lawyers and me. While the bench conferences are being conducted, you should feel free to stand and stretch and visit among yourselves about anything except the case.

INSTRUCTION NO. 24

During the course of the trial, to ensure fairness, you as jurors must obey the following rules.

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdicts.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, do not use any electronic device or media, such as the telephone, a cell or smart phone, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog or website such as Facebook, YouTube or Twitter, to communicate to anyone any information about this case, or your opinions concerning it, until the trial has ended and you have been discharged as jurors.

Fourth, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it, until the trial has ended and your verdicts have been accepted by me. If someone should try to talk with you about the case during the trial, please report it to me through the Court Security Officer.

Fifth, during the trial, you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case—you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall or the like, it is because they are not supposed to talk or visit with you.

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INSTRUCTION NO. 24 (Cont'd)

Sixth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case, or about anyone involved with it. In fact, until the trial is over, I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but, if there are, you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Seventh, do not do any research or make any investigation about the case on your own. Do not consult any reference materials such as the Internet, books, magazines, dictionaries or encyclopedias. Do not contact anyone to ask them questions about issues that may arise in this case. Remember you are not permitted to talk to anyone (except your fellow jurors) about this case or anyone involved with it until the trial has ended and I have discharged you as jurors.

Eighth, do not make up your mind during the trial about what the verdicts should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

INSTRUCTION NO. 25

The trial will proceed in the following manner:

First, the attorney for the government will make an opening statement. Next, the attorney for each defendant may, but does not have to, make an opening statement. An opening statement is not evidence, but is simply a summary of what the attorneys expect the evidence to be.

The government will then present its evidence, and the attorneys for the defendants may cross-examine. Following the government's case, the defendants may, but do not have to, present evidence, testify or call other witnesses. If the defendants call witnesses, the attorney for the government may cross-examine them.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. After that, the court will instruct you further regarding your deliberations, and you will retire to deliberate on your verdicts.

Dated this 9th day of August, 2016.



**Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa**