

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELIZABETH LOPEZ,

Defendant.

No. CR 15-4051-MWB

**INSTRUCTIONS  
TO THE JURY**

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**VERDICT FORM**

## No. 1 — INTRODUCTION

Congratulations on your selection as a juror! These Instructions will help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged defendant Elizabeth Lopez with a “methamphetamine conspiracy” offense and a “possession with intent to distribute methamphetamine” offense. An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to each offense, and she is presumed absolutely not guilty of each offense, unless and until the prosecution proves her guilt beyond a reasonable doubt.

You must decide whether or not the prosecution has proved the defendant’s guilt on each offense beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, these instructions, and any additional oral or written instructions that I may give you. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Remember, only defendant Lopez, and not anyone else, is on trial. Also, she is on trial *only* for the offenses charged in the Indictment, and not for anything else.

The defendant is entitled to have each charge against her considered separately, based solely on the evidence that applies to that offense. *Therefore,*

*you must give separate consideration to each charge against the defendant and return a separate, unanimous verdict on each charge.*

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

## **No. 2 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF**

The presumption of innocence means that the defendant is presumed to be absolutely not guilty. This presumption

- means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that she is here in court
- remains with the defendant throughout the trial
- is enough, alone, for you to find the defendant not guilty of each offense charged against her

The burden is always on the prosecution to prove guilt beyond a reasonable doubt. This burden

- never, ever shifts to the defendant to prove her innocence
- means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify
- means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict
- means that you must find the defendant not guilty of each offense charged, unless the prosecution proves beyond a reasonable doubt that she has committed each and every element of that offense

### **No. 3 — REASONABLE DOUBT**

A reasonable doubt is a doubt based upon reason and common sense. A reasonable doubt

- may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence
- may also arise from the prosecution's lack of evidence

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt

- requires careful and impartial consideration of all of the evidence in the case before making a decision
- is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs
- is proof that leaves you firmly convinced of the defendant's guilt

The prosecution's burden is heavy, but it does not require proof beyond all doubt.

## No. 4 — OTHER IMPORTANT TERMS

Before I turn to specific instructions on the offenses charged in this case, I will explain some important terms.

### *Elements*

Each offense charged consists of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of an offense charged against the defendant for you to find her guilty of that offense.

### *Timing*

The Indictment alleges an approximate time period or an approximate date for each offense.

- The prosecution does not have to prove that an offense occurred on an exact date
- It only has to prove that an offense occurred at a time that was reasonably close to or within the period or the date alleged for that offense in the Indictment

### *Location*

For purposes of the “conspiracy” offense,

- the prosecution must prove that one or more acts of the defendant or a co-conspirator for the purpose of carrying out or carrying forward

the conspiracy were begun, continued, or completed in the Northern District of Iowa

For purposes of the “possession with intent to distribute” offense,

- you must decide whether the defendant’s conduct occurred in the Northern District of Iowa

### *Methamphetamine*

The offenses charged in this case allegedly involved methamphetamine. Methamphetamine is an illegal drug. Two forms of methamphetamine are allegedly involved in this case:

- “methamphetamine mixture”
  - “methamphetamine mixture” is a mixture or substance containing a detectable amount of methamphetamine
- “actual (pure) methamphetamine”
  - “actual (pure) methamphetamine” is methamphetamine itself—either by itself or contained in a methamphetamine mixture

### *Possession*

A person possessed something if both of the following are true:

- the person knew about it, *and*
- the person had
  - physical control over it, *or*
  - the power, or ability, and the intention to control it, *or*

- control over a place in which it was concealed

More than one person may have possessed something at the same time.

### ***Distribution***

A person distributed an illegal drug, if the person transferred possession of the illegal drug to another person.

The prosecution does not have to prove

- that the illegal drug was “sold,” or
- that money or anything of value changed hands

\* \* \*

I will now give you the “elements” instructions on the charged offenses. The “elements” themselves are set out in **bold**.

**No. 5 — COUNT 1: THE ALLEGED  
“METHAMPHETAMINE CONSPIRACY”  
OFFENSE**

**Count 1** of the Indictment charges the defendant with a “methamphetamine conspiracy” offense. The defendant denies that she committed this offense.

The prosecution must prove beyond a reasonable doubt *all* of the following elements against the defendant:

***One*, at some time during the period alleged for the conspiracy, from about 2015 through about August 2015, in the Northern District of Iowa, two or more persons reached an agreement or understanding to distribute methamphetamine.**

A conspiracy is an agreement of two or more persons to commit one or more crimes. For this element to be proved,

- the defendant may have been, but did not have to be, one of the original conspirators
- the crime that the conspirators agreed to commit did not actually have to be committed
- the agreement did not have to be written or formal
- the agreement did not have to involve every detail of the conspiracy

Here, the conspirators allegedly agreed to “distribute methamphetamine.”

- To help you decide whether or not the conspirators agreed to “distribute methamphetamine,” you should consider the elements of a “distribution” offense.
- The elements of “distributing methamphetamine” are the following:
  - a person intentionally distributed methamphetamine to another; and
  - at the time of the distribution, the person knew that he or she was distributing an illegal drug

Remember,

- the prosecution does not have to prove that any conspirator actually distributed methamphetamine for a conspiracy charge to be proved, *but*
- if there was no agreement to distribute methamphetamine, there was no conspiracy

***Two, the defendant voluntarily and intentionally joined in the agreement or understanding.***

The prosecution must prove that the defendant had some degree of knowing involvement and cooperation in the agreement to prove that she joined in the agreement.

The defendant may have joined in the agreement

- at any time during its existence
- even if she agreed to play only a minor role in it

The defendant did not have to do any of the following to join the agreement:

- join the agreement at the same time as all of the other conspirators
- know all of the details of the conspiracy, such as the names, identities, or locations of all of the other members, or
- conspire with every other member of the conspiracy

On the other hand, evidence of each of the following, alone, is not enough to show that a person joined the agreement:

- a person was merely present at the scene of an event
- a person merely acted in the same way as others
- a person merely associated with others
- a person was friends with or met socially with individuals involved in the conspiracy
- a person who had no knowledge of a conspiracy acted in a way that advanced an objective of the conspiracy
- a person merely knew of the existence of a conspiracy
- a person merely knew that an objective of the conspiracy was being considered or attempted, or
- a person merely approved of the objectives of the conspiracy

If you find that there was an agreement, but you find that the defendant did not join in that agreement, then you cannot find her guilty of this “conspiracy” offense.

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

The prosecution

- must prove that the defendant knew the purpose of the conspiracy, *but*
- does *not* have to prove that the defendant knew that what she did was unlawful

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to the defendant, then you must find her not guilty of the “methamphetamine conspiracy” offense charged in **Count 1**.

If you find the defendant guilty of the “methamphetamine conspiracy,” then you must also determine the form and quantity of any methamphetamine involved in that conspiracy for which she can be held responsible, as explained in Instruction No. 8.

**No. 6 — COUNT 2: THE ALLEGED “POSSESSION WITH INTENT TO DISTRIBUTE” OFFENSE**

**Counts 2** charges the defendant with a “possession with intent to distribute methamphetamine” offenses. The defendant denies that she committed this offense.

The prosecution must prove beyond a reasonable doubt *all* of the following elements against the defendant:

***One*, on or about August 5, 2015, the defendant possessed a methamphetamine mixture which contained actual (pure) methamphetamine.**

You must decide whether or not the substance that the defendant possessed was, in fact, a methamphetamine mixture and whether it contained actual (pure) methamphetamine, as defined in Instruction No. 4.

- You may consider all of the evidence in the case that may aid in the determination of this issue
- If the substance that the defendant possessed was not a methamphetamine mixture containing actual (pure) methamphetamine, as defined, then you cannot convict her of this offense, even if you find that she possessed some other illegal drug with intent to distribute it

***Two*, the defendant knew that she was, or intended to be, in possession of an illegal drug.**

The defendant need not have known what the illegal drug was, if she knew that she was in possession of some illegal drug.

***Three*, the defendant intended to distribute the methamphetamine mixture containing actual (pure) methamphetamine to another person.**

You may, but are not required, to infer an “intent to distribute” from the following:

- possession of a large quantity of the illegal drug in excess of what an individual user would consume, and
- drug purity, if it suggests that the drugs were intended to be “cut” or diluted before distribution, rather than used in a “pure” form, and the defendant was aware of such purity; and
- the presence of firearms, cash, packaging material, or other distribution paraphernalia

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “possessing with intent to distribute methamphetamine” offense charged in **Count 2** of the Indictment.

On the other hand, if you find the defendant guilty of this offense, then you must also determine the quantity of any actual (pure) methamphetamine involved in the offense for which she can be held responsible, as explained in Instruction No. 8.

**No. 7 — COUNT 2: THE “LESSER-INCLUDED  
OFFENSE” OF “POSSESSION OF  
METHAMPHETAMINE”**

You should consider the “lesser-included offense” of “possession of methamphetamine,” if

- you find defendant Lopez not guilty of the “possession with intent to distribute methamphetamine” offense charged in **Count 2**, or
- you are unable to reach a verdict on that offense

To prove this “lesser-included offense” offense, the prosecution must prove beyond a reasonable doubt *both* of the following elements against the defendant:

***One, on or about August 5, 2015, the defendant possessed methamphetamine.***

You must decide whether or not the substance that the defendant possessed was, in fact, methamphetamine, as defined in Instruction No. 4.

- You may consider all of the evidence in the case that may aid in the determination of this issue
- If the substance that the defendant possessed was not methamphetamine, as defined, then you cannot convict her of this offense, even if you find that she possessed some other illegal drug with intent to distribute it

***Two*, the defendant knew that she was, or intended to be, in possession of an illegal drug.**

The defendant need not have known what the illegal drug was, if she knew that she was in possession of some illegal drug.

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “lesser-included offense” of “possession of methamphetamine.”

## **No. 8 — FORM AND QUANTITY OF METHAMPHETAMINE**

If you find the defendant guilty of

- the “methamphetamine conspiracy” offense charged in **Count 1**,  
and/or
- the “possession with intent to distribute methamphetamine” offense  
charged in **Count 2**,

then you must determine beyond a reasonable doubt the form and quantity of any methamphetamine involved in each such offense for which she can be held responsible.

You do not need to determine the form or quantity of methamphetamine involved in the “lesser-included offense” of “possession of methamphetamine,” if you find defendant Lopez guilty of that offense.

### ***Responsibility***

**A defendant guilty of the “methamphetamine conspiracy”** charged in **Count 1** of the Indictment is responsible for:

- any methamphetamine that she actually distributed or agreed to  
distribute during the course of the conspiracy
- any methamphetamine that she personally used or acquired for  
personal use from a co-conspirator

- any methamphetamine that fellow conspirators actually distributed or agreed to distribute during the conspiracy that was reasonably foreseeable as a necessary or natural consequence of the conspiracy

**A defendant guilty of the “possession with intent to distribute methamphetamine” offense charged in Count 2 of the Indictment:**

- is responsible for any methamphetamine that she possessed with intent to distribute, *but*
- is *not* responsible for methamphetamine that she acquired or possessed only for her own personal use

### ***Forms Of Methamphetamine***

Each offense charged in the Indictment allegedly involved either or both “methamphetamine mixture” and “actual (pure) methamphetamine.”

- You must determine the quantity of any form of methamphetamine that you find was involved in a charged offense
- If you find that a charged offense involved both “methamphetamine mixture” and “actual (pure) methamphetamine,” then you must determine the total quantity of each form of methamphetamine, even if the “actual (pure) methamphetamine” was contained in a “methamphetamine mixture”

***Quantities Of Methamphetamine***

**If you find the defendant guilty of the “methamphetamine conspiracy,”** charged in **Count 1**, you will answer the following questions in the Verdict Form:

Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the “methamphetamine conspiracy” offense charged in <b>Count 1</b> of the Indictment, please indicate (a) which one or more forms of methamphetamine were involved in the conspiracy, and (b) in the column below each such form of methamphetamine, the quantity of that form of methamphetamine for which she is responsible, as explained in <b>Instruction No. 8.</b></i>	
(a)	___ methamphetamine mixture ↓	___ actual (pure) methamphetamine ↓
(b)	___ 500 grams or more	___ 50 grams or more
	___ 50 grams or more, but less than 500 grams	___ 5 grams or more, but less than 50 grams
	___ less than 50 grams	___ less than 5 grams

**If you find the defendant guilty of the “possession with intent to distribute methamphetamine” offense,** charged in **Count 2**, you will answer the following questions in the Verdict Form:

Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the “possession with intent to distribute methamphetamine” offense charged in <b>Count 2</b> of the Indictment in <b>Step 1</b>, please indicate (a) the form or forms of any methamphetamine involved in the offense and (b) in the column below “actual (pure) methamphetamine,” the quantity of that form of methamphetamine, if any, involved in the offense for which she is responsible, as explained in <b>Instruction No. 8.</b></i>	
(a)	___ methamphetamine mixture	___ actual (pure) methamphetamine ↓
(b)		___ 5 grams or more
		___ less than 5 grams

The following conversion table may be helpful:

POUNDS/OUNCES	GRAMS
1 lb.	453.6 g. (0.4536 kilogram)
2.2 lb.	1,000 g. (1 kilogram)
1 oz.	28.34 g. (0.028 kilogram)

At the end of your deliberations, if you have found the defendant guilty of an offense charged in the Indictment, you will check the appropriate blanks in the Verdict Form for that offense to indicate

- the form or forms of methamphetamine, and
  - the quantity of any form of methamphetamine
- involved in that offense for which you find the defendant is responsible.

## No. 9 — DEFINITION OF EVIDENCE

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact

- An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide.

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

## No. 10 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the witness's

- Opportunity to have seen and heard what happened
- Motives for testifying
- Interest in the outcome of the case
- Drug or alcohol use or addiction, if any
- The reasonableness of the witness's testimony
- Memory. Memory is not an exact recording of past events and witnesses may misremember events and conversations. Scientific research has established
  - that human memory is not at all like video recordings that a witness can simply replay to remember precisely what happened
  - that when a witness has been exposed to statements, conversations, questions, writings, documents, photographs, media reports, and opinions of others, the accuracy of their memory may be affected and distorted
  - that a witness's memory, even if testified to in good faith, and with a high degree of confidence, may be inaccurate, unreliable, and falsely remembered; thus, human memory can be distorted, contaminated, or changed, and events and conversations can even be falsely imagined

- that distortion, contamination, and falsely imagined memories may happen at each of the three stages of memory: acquisition (perception of events); storage (period of time between acquisition and retrieval); and retrieval (recalling stored information).
- Demeanor. Scientific research has established
  - that there is not necessarily a relationship between how confident witnesses are about their testimony and the accuracy of their testimony; thus, less confident witnesses may be more accurate than confident witnesses
  - that common cultural cues, like shifty eyes, shifty body language, the failure to look one in the eye, grimaces, stammering speech, and other mannerisms, are not necessarily correlated to witness deception or false or inaccurate testimony

In evaluating a witness's testimony, also consider the following:

- Any differences between what the witness says now and said earlier
- Any inconsistencies between the witness's testimony and any other evidence that you believe
- Whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- Any other factors that you find bear on believability or credibility

If the defendant testifies,

- you should judge her testimony in the same way that you judge the testimony of any other witness

You should not give any more or less weight to a witness's testimony just because the witness is

- a public official or law enforcement officer
- an expert

You may give any witness's opinion whatever weight you think it deserves, but you should consider

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

You must consider with greater caution and care the testimony, if any, of a witness who is testifying

- that he or she participated in the charged offense, or
- after a promise from the prosecution not to use that witness's testimony, to a grand jury or at this trial, against that witness in a criminal case, or
- pursuant to a plea agreement

- The plea agreement may be a “cooperation” plea agreement that provides that the prosecution may recommend a less severe sentence if the prosecutor believes that the witness has provided “substantial assistance”
- A judge cannot reduce a sentence for “substantial assistance” unless the prosecution asks the judge to do so, but if the prosecution does ask, the judge decides if and how much to reduce the witness’s sentence

It is for you to decide

- what weight you think the testimony of such a witness deserves, and
- whether or not such a witness’s testimony has been influenced by
  - the desire to please the prosecution
  - any promises by the prosecution
  - any payment or other benefit provided by the prosecution, or
  - a plea agreement

Remember, it is your exclusive right to give any witness’s testimony whatever weight you think it deserves.

## **No. 11 — OBJECTIONS**

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

## **No. 12 — BENCH CONFERENCES**

During the trial it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

## No. 13 — NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them
- If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence
- An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations

## No. 14 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and the law in these Instructions and any additional written or oral instructions that I may give. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to begin your deliberations.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.
- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell

them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, Twitter, or Instagram, to communicate to anyone any information about this case until I accept your verdict.

- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on “implicit biases.” As we discussed during jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes—that is, “implicit biases”—that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence and the instructions that I give you. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- A Verdict Form is attached to these Instructions. A Verdict Form is simply a written notice of your decision. After your deliberations, if you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question. You will all sign that copy to indicate that you agree with the verdict and that it is unanimous. Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict.

- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

## **No. 15 — DUTY TO DELIBERATE**

A verdict must represent the careful and impartial judgment of each of you. However, before you make that judgment, you must consult with one another and try to reach agreement, if you can do so consistent with your individual judgment.

- Don't give up your honest beliefs just because others think differently or because you simply want to be finished with the case
- On the other hand, do not hesitate to re-examine your own views and to change your opinions, if you are convinced that they are wrong
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence and the instructions that I give you
- You must consider all of the evidence bearing on each question before you
- Take all the time that you feel is necessary
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case

## No. 16 — DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

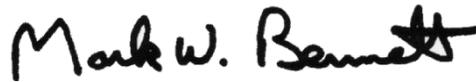
- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of one or more offenses, I will decide what her sentence should be.
- Communicate with me by sending me a note through a CSO. The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to her race, color, religious beliefs, national origin, or sex. To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the

signature block, if the statement accurately reflects how you reached your verdict.

- Complete the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 25th day of May, 2016.



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MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELIZABETH LOPEZ,

Defendant.

No. CR 15-4051-MWB

**VERDICT FORM**

As to defendant Elizabeth Lopez, we, the Jury, find as follows:

<b>COUNT 1: THE ALLEGED “METHAMPHETAMINE CONSPIRACY” OFFENSE</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	On the “methamphetamine conspiracy” offense, charged in <b>Count 1</b> of the Indictment and explained in <b>Instruction No. 5</b> , please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the questions in Step 2. Instead, please go on to consider your verdict on Count 2 in the next section of this Verdict Form.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty
<b>Step 2:</b> Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the “methamphetamine conspiracy” offense charged in Count 1 of the Indictment in Step 1, please indicate (a) which one or more forms of methamphetamine were involved in the conspiracy, and (b) in the column below each such form of methamphetamine, the quantity of that form of methamphetamine for which she is responsible, as explained in Instruction No. 8. (When you have answered the questions in this step, please go on to consider your verdict on Count 2 in the next section of this Verdict Form.)</i>	
(a)	<input type="checkbox"/> methamphetamine mixture 	<input type="checkbox"/> actual (pure) methamphetamine 
(b)	<input type="checkbox"/> 500 grams or more	<input type="checkbox"/> 50 grams or more
	<input type="checkbox"/> 50 grams or more, but less than 500 grams	<input type="checkbox"/> 5 grams or more, but less than 50 grams
	<input type="checkbox"/> less than 50 grams	<input type="checkbox"/> less than 5 grams

<b>COUNT 2: THE ALLEGED “POSSESSION WITH INTENT TO DISTRIBUTE” OFFENSE</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	On the charge of “possession with intent to distribute methamphetamine,” as charged in <b>Count 2</b> of the Indictment and explained in <b>Instruction No. 6</b> , please mark your verdict. <i>(If you find the defendant “guilty,” please answer the question in Step 2. If you find the defendant “not guilty” or answer “no verdict,” please skip to Step 3.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> No Verdict
<b>Step 2:</b> Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the “possession with intent to distribute methamphetamine” offense charged in Count 2 of the Indictment in Step 1, please indicate (a) which one or more forms of methamphetamine were involved in that offense, and (b) in the column below “actual (pure) methamphetamine,” the quantity of that form of methamphetamine, if any, involved in the offense for which she is responsible, as explained in Instruction No. 8. (When you have completed this step, please sign the Verdict Form and notify the Court Security Officer (CSO) that you have reached a verdict. Do not consider Step 3.)</i>	
(a)	<input type="checkbox"/> methamphetamine mixture	<input type="checkbox"/> actual (pure) methamphetamine ↓
(b)		<input type="checkbox"/> 5 grams or more
		<input type="checkbox"/> less than 5 grams
<b>Step 3:</b> “Lesser-Included Offense” of “Possession”	<i>If you found the defendant “not guilty” or answered “no verdict” in Step 1, please indicate your verdict on the “lesser-included offense” of “possession of methamphetamine,” as explained in Instruction No. 7. (After completing this Step, please sign the Verdict Form and notify the Court Security Officer (CSO) that you have reached a verdict.)</i>	
	<input type="checkbox"/> Not Guilty	<input type="checkbox"/> Guilty
<b>CERTIFICATION</b>		
By signing below, each juror certifies the following: (1) that consideration of the defendant’s race, color, religious beliefs, national origin, or sex was not involved in reaching the juror’s individual decision, <i>and</i> (2) that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the defendant’s race, color, religious beliefs, national origin, or sex.		

\_\_\_\_\_ Date

\_\_\_\_\_ Foreperson

\_\_\_\_\_ Juror

Juror	Juror

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELIZABETH LOPEZ,

Defendant.

No. CR 15-4051-MWB

**COURT’S PROPOSED  
INSTRUCTIONS  
TO THE JURY**

(05/24/16 REVISED  
“ANNOTATED” VERSION)

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**VERDICT FORM**

## No. 1 — INTRODUCTION<sup>1</sup>

Congratulations on your selection as a juror! These Instructions will help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged defendant Elizabeth Lopez with a “methamphetamine conspiracy” offense and a “possession with intent to distribute methamphetamine” offense.<sup>2</sup> An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to each offense, and she is presumed absolutely not guilty of each offense, unless and until the prosecution proves her guilt beyond a reasonable doubt.

You must decide whether or not the prosecution has proved the defendant’s guilt on each offense beyond a reasonable doubt. In making your decision, you

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<sup>1</sup> Compare 8th Cir. Criminal Model 1.01 (2014). As the parties know, for many years, I have *not* given separate preliminary and final jury instructions. Rather, before opening statements, I provide the jurors with “front-end loaded” instructions that explain all of the issues that we can reasonably anticipate and the “elements” in the charged offense. I reserve only the last two instructions, on deliberations, to read after the parties’ closing arguments. In rare circumstances, where either unexpected issues arise during trial or I must assess the adequacy of certain evidence before instructing on an issue, I give “supplemental” instructions during the trial or at the close of the evidence. *At this point, I am considering whether to include a “buyer-seller” instruction in the explanation to element one of Count 1 and a “lesser-included offense” instruction for Count 2 from the beginning (as in this set) or to reserve such instructions as “supplemental” jury instructions, to be given only if I conclude that the evidence at trial warrants them.*

<sup>2</sup> I do not find it necessary to reiterate more specifically the offenses with which the defendant is charged. Rather, the charged offenses will be addressed with particularity in the “elements” instructions.

are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, these instructions, and any additional oral or written instructions that I may give you. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Remember, only defendant Lopez, and not anyone else, is on trial. Also, she is on trial *only* for the offenses charged in the Indictment, and not for anything else.

The defendant is entitled to have each charge against her considered separately, based solely on the evidence that applies to that offense. *Therefore, you must give separate consideration to each charge against the defendant and return a separate, unanimous verdict on each charge.*<sup>3</sup>

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

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<sup>3</sup> This paragraph addresses separate consideration of the charge against each defendant. *Compare* 8th Cir. Criminal Model 3.06 (2014), unnumbered ¶ 4.

## No. 2 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF<sup>4</sup>

The presumption of innocence means that the defendant is presumed to be absolutely not guilty. This presumption

- means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that she is here in court
- remains with the defendant throughout the trial
- is enough, alone, for you to find the defendant not guilty of each offense charged against her

The burden is always on the prosecution to prove guilt beyond a reasonable doubt. This burden

- never, ever shifts to the defendant to prove her innocence
- means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify
- means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict
- means that you must find the defendant not guilty of each offense charged, unless the prosecution proves beyond a reasonable doubt that she has committed each and every element of that offense

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<sup>4</sup> Compare 8th Cir. Criminal Model 3.05 (2014).

### No. 3 — REASONABLE DOUBT<sup>5</sup>

A reasonable doubt is a doubt based upon reason and common sense. A reasonable doubt

- may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence
- may also arise from the prosecution's lack of evidence

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt

- requires careful and impartial consideration of all of the evidence in the case before making a decision
- is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs
- is proof that leaves you firmly convinced of the defendant's guilt

The prosecution's burden is heavy, but it does not require proof beyond all doubt.

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<sup>5</sup> Compare 8th Cir. Criminal Model 3.11 (2014). This is a more recent version of my stock instruction than the parties have proffered.

## No. 4 — OTHER IMPORTANT TERMS<sup>6</sup>

Before I turn to specific instructions on the offenses charged in this case, I will explain some important terms.

### *Elements*

Each offense charged consists of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of an offense charged against the defendant for you to find her guilty of that offense.<sup>7</sup>

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<sup>6</sup> I recognize that 8th Cir. Criminal Model 7.05 (2014) provides an instruction on “proof of intent or knowledge.” In late 2001, during one of my numerous attempts to refine and streamline my stock jury instructions, I stopped giving the second paragraph of that model, concerning inferring intent from the natural and probable consequences of acts knowingly done. At that time, I explained that I had deleted that language, because I simply did not believe that it was helpful to the jury, and I doubted that jurors would understand what it meant. In approximately late 2009, I stopped giving any instruction at all on “knowledge” and “intent” as unnecessary and unhelpful to the jury. I do not find 8th Cir. Criminal Model 7.05, or any part of it, to be either necessary or helpful here. See *United States v. Iron Eyes*, 367 F.3d 781, 785 (8th Cir. 2004) (“In our circuit, . . . a trial judge is not required to give the jury such a definition [of ‘knowingly’ or ‘knowing’] because the definition is ‘a matter of common knowledge.’” (quoting *United States v. Brown*, 33 F.3d 1014, 1017 (8th Cir. 1994))).

<sup>7</sup> Judges and attorneys take for granted that an offense has “elements,” but this concept may not be so obvious to lay jurors.

### *Timing*

The Indictment alleges an approximate time period or an approximate date for each offense.

- The prosecution does not have to prove that an offense occurred on an exact date
- It only has to prove that an offense occurred at a time that was reasonably close to or within the period or the date alleged for that offense in the Indictment

### *Location*

For purposes of the “conspiracy” offense,

- the prosecution must prove that one or more acts of the defendant or a co-conspirator for the purpose of carrying out or carrying forward the conspiracy were begun, continued, or completed in the Northern District of Iowa

For purposes of the “possession with intent to distribute” offense,

- you must decide whether the defendant’s conduct occurred in the Northern District of Iowa<sup>8</sup>

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<sup>8</sup> The prosecution requests identification of Sioux City and Woodbury County as locations in the Northern District of Iowa. I have concluded, however, that it is the prosecution’s responsibility to prove that any pertinent locations are in this District.

### *Methamphetamine*

The offenses charged in this case allegedly involved methamphetamine. Methamphetamine is an illegal drug. Two forms of methamphetamine are allegedly involved in this case:

- “methamphetamine mixture”
  - “methamphetamine mixture” is a mixture or substance containing a detectable amount of methamphetamine
- “actual (pure) methamphetamine”
  - “actual (pure) methamphetamine” is methamphetamine itself—either by itself or contained in a methamphetamine mixture<sup>9</sup>

### *Possession*<sup>10</sup>

A person possessed something if both of the following are true:

- the person knew about it, *and*
- the person had
  - physical control over it, *or*

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<sup>9</sup> My “stock” instruction on forms of methamphetamine. *See United States v. Kuenstler*, 325 F.3d 1015, 1023 (8th Cir. 2003) (defining the phrase “mixture or substance containing a detectable amount of methamphetamine”); U.S.S.G. § 2D1.1 (defining “methamphetamine (actual)”); *see also United States v. Mesner*, 377 F.3d 849, 852 & n.1 (8th Cir. 2004) (relying on U.S.S.G. § 2D1.1); *United States v. Houston*, 338 F.3d 876, 881 (8th Cir. 2003) (same).

<sup>10</sup> 9th Cir. Criminal Model 3.18 (modified and recast in past tense).

- the power, or ability,<sup>11</sup> and the intention to control it, *or*
- control over a place in which it was concealed<sup>12</sup>

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<sup>11</sup> See *United States v. Zoch*, No. CR 11-4031-MWB (N.D. Iowa Nov. 16, 2011) (docket no. 55-1) (giving an explanation of “power” in terms of “ability” in answer to a jury question).

<sup>12</sup> This explanation is consistent with numerous decisions of the Eighth Circuit Court of Appeals. See, e.g., *United States v. Goodrich*, 739 F.3d 1091, 1097 (8th Cir. 2014) (“‘Constructive possession is established by proof that the defendant had control over the place where the firearm was located, or control, ownership, or dominion of the [item] itself.’” (quoting *United States v. Brown*, 634 F.3d 435, 439 (8th Cir. 2011))). I recognize that the Eighth Circuit Court of Appeals has also stated, “[C]onstructive possession generally requires knowledge of an object, the ability to control it, and the intent to do so.” *United States v. Chantharath*, 705 F.3d 295, 304 (8th Cir. 2013) (quoting *United States v. Pazour*, 609 F.3d 950, 952–53 (8th Cir. 2010)). Nevertheless, the “intent to control” requirement is not necessarily “intent to exercise control over the [item],” but may be “‘intent and ability to exercise control over [the item] or the place where it is kept.’” *United States v. Kent*, 531 F.3d 642, 652 (8th Cir. 2008) (emphasis added) (quoting *United States v. Robertson*, 519 F.3d 452, 455 (8th Cir. 2008)). Also, even when “intent to control” is expressly identified as a requirement, it is not always explicitly considered in determining the sufficiency of the evidence of constructive possession. See, e.g., *Chantharath*, 705 F.3d at 304 (finding sufficient evidence of constructive possession of a firearm where the defendant was the registered tenant of the house and apartment where the firearms were discovered and he acknowledged possession of a firearm at the house when he sent another person to retrieve a bag that the defendant claimed contained firearms). Furthermore, the Eighth Circuit Court of Appeals has recognized that, where “constructive possession requires evidence that a defendant knowingly had the power and intention to exercise control over a[n] [item],” “[s]uch possession may be established by showing the defendant had dominion over the premises where the [item] is kept.” *United States v. Saddler*, 538 F.3d 879, 888 (8th Cir. 2008). Where it is proper to infer “intent to control” an item or the place where it is found from “knowledge” of the item and “dominion” (or “control”) of the item or the place where the item is found, it is not necessary to state “intent to control” the item or the place where it is found as an express requirement of constructive possession.

More than one person may have possessed something at the same time.<sup>13</sup>

*Distribution*<sup>14</sup>

A person distributed an illegal drug, if the person transferred possession of the illegal drug to another person.

The prosecution does not have to prove

- that the illegal drug was “sold,” or
- that money or anything of value changed hands

\* \* \*

I will now give you the “elements” instructions on the charged offenses. The “elements” themselves are set out in **bold**.

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<sup>13</sup> I find that it is unnecessary to include an additional instruction defining “sole” and “joint” possession, as set out in 8th Cir. Criminal Model 8.02 (2014), because instructing that “[m]ore than one person may have possessed something at the same time” adequately addresses the concepts of “sole” and “joint” possession.

<sup>14</sup> 8th Cir. Criminal Model 6.21.841B n.1 (2014) (suggesting that “transfer” may be more understandable than “distribute”); *see also United States v. Ragland*, 555 F.3d 706, 714 (8th Cir. 2009) (noting that “[n]o commercial element is required,” and citing cases). Where all of the charged offenses allegedly involved possession with intent to distribute or conspiracy to distribute, I find it more economical to define “distribution” once, then cross reference that definition in the explanation of pertinent “elements.”

**No. 5 — COUNT 1: THE ALLEGED  
“METHAMPHETAMINE CONSPIRACY”  
OFFENSE<sup>15</sup>**

**Count 1** of the Indictment charges the defendant with a “methamphetamine conspiracy” offense. The defendant denies that she committed this offense.

The prosecution must prove beyond a reasonable doubt *all* of the following elements against the defendant:<sup>16</sup>

***One, at some time during the period alleged for the conspiracy, from about 2015 through about August 2015, in the Northern District of Iowa, two or more persons reached an agreement or understanding to distribute methamphetamine.***

A conspiracy is an agreement of two or more persons to commit one or more crimes. For this element to be proved,

- the defendant may have been, but did not have to be, one of the original conspirators

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<sup>15</sup> Compare 8th Cir. Criminal Model 6.21.846A (2014).

<sup>16</sup> I consider a drug conspiracy offense to be complete upon proof of these elements; determination of the drug quantity involved (where necessary) is made pursuant to a separate Instruction, not as an element of the offense (or as a “lesser-included offense”). This is so, because drug quantity is only the “functional equivalent” of an element of the offense under *Apprendi* and its progeny *in the specific sense* that drug quantity must be charged and determined by a jury beyond a reasonable doubt. Moreover, treating drug quantity as an element or as the basis for a “lesser-included offense” determination is unnecessarily confusing to a jury.

- the crime that the conspirators agreed to commit did not actually have to be committed
- the agreement did not have to be written or formal
- the agreement did not have to involve every detail of the conspiracy<sup>17</sup>

Here, the conspirators allegedly agreed to “distribute methamphetamine.”

- To help you decide whether or not the conspirators agreed to “distribute methamphetamine,” you should consider the elements of a “distribution” offense.
- The elements of “distributing methamphetamine” are the following:
  - a person intentionally distributed methamphetamine to another; and
  - at the time of the distribution, the person knew that he or she was distributing an illegal drug

Remember,

- the prosecution does not have to prove that any conspirator actually distributed methamphetamine for a conspiracy charge to be proved, *but*

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<sup>17</sup> 9th Cir. Criminal Model 8.16, ¶¶ 6-7.

- if there was no agreement to distribute methamphetamine, there was no conspiracy<sup>18</sup>

**Two, the defendant voluntarily and intentionally joined in the agreement or understanding.**

The prosecution must prove that the defendant had some degree of knowing involvement and cooperation in the agreement to prove that she joined in the agreement.<sup>19</sup>

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<sup>18</sup> See 8th Cir. Criminal Model 5.06A-2 (2014) (success immaterial and “agreement” explained).

The defendant requested a “buyer-seller” instruction in Joint Proposed Jury Instruction No. 5 (“proof of a buyer-seller relationship, without more, is inadequate to tie defendant to a larger conspiracy”). The problems with the defendant’s proposed instruction are that it does not explain what “more” would suffice or what the relevance of a “larger” or “smaller” conspiracy might be. *Also, as I indicated, supra, note 1, I am considering whether to include this instruction from the beginning (as here), or only as a “supplemental” instruction, if I conclude that the evidence warrants it. See, e.g., United States v. Peeler, 779 F.3d 773, 776 (8th Cir. 2015) (“[B]uyer-seller relationship cases involve only evidence of a single transient sales agreement and small amounts of drugs consistent with personal use.” (quoting *United States v. Huggans*, 650 F.3d 1210, 1222 (8th Cir. 2011) (quotation omitted), cert. denied, --- U.S. ---- (2012)); *United States v. Figueroa*, 900 F.2d 1211, 1216-17 (8th Cir. 1990) (a buyer-seller instruction is not appropriate when there is evidence of multiple drug transactions, as opposed to a single isolated sale); *United States v. Turner*, 975 F.2d 490, 497-98 (8th Cir. 1992) (the receipt of large quantities of drugs is evidence of an intent to distribute rather than a single buyer-seller relationship). **I have concluded that a buyer-seller instruction should be reserved as a “supplemental” instruction, to be given only if I conclude that the evidence warrants it.***

<sup>19</sup> See *United States v. Shakur*, 691 F.3d 979, 989 (8th Cir. 2012) (“To establish that a defendant conspired to distribute drugs under 21 U.S.C. § 846, the government must prove: (1) that there was a conspiracy, i.e., an agreement to distribute the drugs; (2) that the defendant knew of the conspiracy; and (3) that the defendant intentionally joined the conspiracy.” (quoting *United States v. Bowie*, 618 F.3d 802, 812 (8th Cir.2010) (quotation omitted), cert. denied, --- U.S. ----, 131 S.Ct. 954 (2011));

The defendant may have joined in the agreement

- at any time during its existence
- even if she agreed to play only a minor role in it<sup>20</sup>

The defendant did not have to do any of the following to join the agreement:

- join the agreement at the same time as all of the other conspirators
- know all of the details of the conspiracy, such as the names, identities, or locations of all of the other members, or
- conspire with every other member of the conspiracy<sup>21</sup>

On the other hand, evidence of each of the following, alone, is not enough to show that a person joined the agreement:

- a person was merely present at the scene of an event
- a person merely acted in the same way as others

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*United States v. Slagg*, 651 F.3d 832, 846 (8th Cir. 2011) (“To prove that Taylor participated in the charged conspiracy, the Government was required to present evidence ‘establish[ing] some degree of knowing involvement and cooperation,’ *United States v. Cabrera*, 116 F.3d 1243, 1244 (8th Cir. 1997) (quoting *United States v. Fregoso*, 60 F.3d 1314, 1323 (8th Cir. 1995)), beyond ‘a mere sales agreement with respect to contraband,’ *United States v. West*, 15 F.3d 119, 121 (8th Cir. 1994).”).

<sup>20</sup> 8th Cir. Criminal Model 5.06A-2 (2014) (“minor role”).

<sup>21</sup> 8th Cir. Criminal Model 5.06A-2 (2014).

- a person merely associated with others
- a person was friends with or met socially with individuals involved in the conspiracy
- a person who had no knowledge of a conspiracy acted in a way that advanced an objective of the conspiracy
- a person merely knew of the existence of a conspiracy
- a person merely knew that an objective of the conspiracy was being considered or attempted, or
- a person merely approved of the objectives of the conspiracy<sup>22</sup>

If you find that there was an agreement, but you find that the defendant did not join in that agreement, then you cannot find her guilty of this “conspiracy” offense.

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

The prosecution

- must prove that the defendant knew the purpose of the conspiracy, ***but***

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<sup>22</sup> My stock “mere presence,” etc.,” instruction, modified in light of 8th Cir. Criminal Model 5.06A-2 (2014); *United States v. Burchinal*, 657 F.2d 885, 991 n.3 (8th Cir. 1981) (“Although we are aware that neither mere association with members of a conspiracy nor mere knowledge, approval or acquiescence in the object of a conspiracy is sufficient as proof that an individual is part of that conspiracy, [citing cases], there is no issue in the present case as to whether Burchinal contributed to the furtherance of the conspiracy.”).

- does *not* have to prove that the defendant knew that what she did was unlawful

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to the defendant, then you must find her not guilty of the “methamphetamine conspiracy” offense charged in **Count 1**.

If you find the defendant guilty of the “methamphetamine conspiracy,” then you must also determine the form and quantity of any methamphetamine involved in that conspiracy for which she can be held responsible, as explained in Instruction No. 8.

**No. 6 — COUNT 2: THE ALLEGED “POSSESSION WITH INTENT TO DISTRIBUTE” OFFENSE**

**Counts 2** charges the defendant with a “possession with intent to distribute methamphetamine” offenses. The defendant denies that she committed this offense.

The prosecution must prove beyond a reasonable doubt *all* of the following elements against the defendant:

***One*, on or about August 5, 2015, the defendant possessed a methamphetamine mixture which contained actual (pure) methamphetamine.**

You must decide whether or not the substance that the defendant possessed was, in fact, a methamphetamine mixture and whether it contained actual (pure) methamphetamine, as defined in Instruction No. 4**Error! Reference source not found.**

- You may consider all of the evidence in the case that may aid in the determination of this issue
- If the substance that the defendant possessed was not a methamphetamine mixture containing actual (pure) methamphetamine, as defined, then you cannot convict her of this offense, even if you find that she possessed some other illegal drug with intent to distribute it

***Two*, the defendant knew that she was, or intended to be, in possession of an illegal drug.**

The defendant need not have known what the illegal drug was, if she knew that she was in possession of some illegal drug.<sup>23</sup>

**Three, the defendant intended to distribute the methamphetamine mixture containing actual (pure) methamphetamine to another person.**<sup>24</sup>

You may, but are not required, to infer an “intent to distribute” from the following:

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<sup>23</sup> 8th Cir. Criminal Model 6.21.841A, n.2 (2014).

<sup>24</sup> The Committee Comments and note 4 to 8th Cir. Criminal Model 6.21.841A (2014) observe that it is uncertain whether drugs intended only for personal use are included in the drug quantity for a “possession with intent” offense, but add that the Eighth Circuit Court of Appeals has concluded that drugs possessed solely for personal use should not be included, so that the phrase “some or all,” therefore, “should be used with care.” The Eighth Circuit Court of Appeals has reiterated,

[W]here a defendant is “charged with conspiracy to distribute [a controlled substance] ... the amount consumed for personal use should be included in the total.” *United States v. Kamerud*, 326 F.3d 1008, 1013 (8th Cir.2003). By contrast, “[d]rugs acquired for personal use are not relevant conduct when [the] charge is for possession with intent to distribute.” *Id.* (citing *United States v. Fraser*, 243 F.3d 473, 475–76 (8th Cir.2001)).

*United States v. Payton*, 636 F.3d 1027, 1047 (8th Cir. 2011). Using the suggested care, I believe that it is appropriate to delete the “some or all” language from this element, and require that the defendant intended to distribute “methamphetamine mixture containing actual (pure) methamphetamine” to another person. Doing so will remove any potential conflict with the part of the “quantity” instruction, Instruction No. 8, concerning the quantity for a “possession with intent” offense, which will specifically state that methamphetamine possessed only for personal use is *not* included in the quantity for such an offense.

- possession of a large quantity of the illegal drug in excess of what an individual user would consume,<sup>25</sup> and
- drug purity, if it suggests that the drugs were intended to be “cut” or diluted before distribution, rather than used in a “pure” form, and the defendant was aware of such purity;<sup>26</sup> and
- the presence of firearms, cash, packaging material, or other distribution paraphernalia

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “possessing with intent to distribute methamphetamine” offense charged in **Count 2** of the Indictment.

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<sup>25</sup> See 8th Cir. Criminal Model 6.21.841A n.3 (2014).

<sup>26</sup> The defendant objected to the prior version of this instruction, because the DEA’s website indicates that most of the methamphetamine available today is “highly pure,” so that purity alone does not suggest intent to distribute. It is true that actual (pure) methamphetamine, for example, can be an “end-user” form, so that purity alone does not suggest intent to distribute. The inference of intent to distribute from “purity” arises, however, if it suggests that the drugs were intended to be “cut” or diluted before distribution, rather than used in a “pure” form. I have modified this “bullet” accordingly. I have also rearranged the “bullets” to place the emphasis on quantity beyond personal use amounts, which is frequently coupled with purity as evidence of intent to distribute. See, e.g., *United States v. Ponce*, 703 F.3d 1129, 1132 (8th Cir. 20 13) (“Ponce’s possession of 28.28 grams of ninety-five percent pure methamphetamine, while riding in a vehicle containing a scale, knife, and cash, goes a long way toward showing that if he possessed the drugs, then he did so with intent to distribute them.” (citing *United States v. Lopez*, 42 F.3d 463, 467 (8th Cir. 1994), as recognizing that intent to distribute may be established by drug quantity and purity, and the presence of firearms, cash, packaging material, or other distribution paraphernalia).

On the other hand, if you find the defendant guilty of this offense, then you must also determine the quantity of any actual (pure) methamphetamine involved in the offense for which she can be held responsible, as explained in Instruction No. 8.

**No. 7 — COUNT 2: THE “LESSER-INCLUDED  
OFFENSE” OF “POSSESSION OF  
METHAMPHETAMINE”<sup>27</sup>**

You should consider the “lesser-included offense” of “possession of methamphetamine,” if

- you find defendant Lopez not guilty of the “possession with intent to distribute methamphetamine” offense charged in **Count 2**, or
- you are unable to reach a verdict on that offense

To prove this “lesser-included offense” offense, the prosecution must prove beyond a reasonable doubt *both* of the following elements against the defendant:

***One, on or about August 5, 2015, the defendant possessed methamphetamine.***

You must decide whether or not the substance that the defendant possessed was, in fact, methamphetamine, as defined in Instruction No. 4.

- You may consider all of the evidence in the case that may aid in the determination of this issue

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<sup>27</sup> *As I indicated, supra, note 1, I am considering whether to include this instruction from the beginning (as here), or only as a “supplemental” instruction, if I conclude that the evidence warrants it. The defendant requested that I give this instruction in the “primary” set, but the prosecution requested that, if I give this instruction at all, I do so only in the “supplemental” set. I have concluded that, based on the parties’ previews of the evidence, that there is likely to be sufficient evidence to warrant this instruction. If I am convinced after hearing the evidence that the instruction is not warranted, I can strike it.*

- If the substance that the defendant possessed was not methamphetamine, as defined, then you cannot convict her of this offense, even if you find that she possessed some other illegal drug with intent to distribute it

***Two, the defendant knew that she was, or intended to be, in possession of an illegal drug.***

The defendant need not have known what the illegal drug was, if she knew that she was in possession of some illegal drug.<sup>28</sup>

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “lesser-included offense” of “possession of methamphetamine.”<sup>29</sup>

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<sup>28</sup> 8th Cir. Criminal Model 6.21.841A, n.2 (2014).

<sup>29</sup> The defendant recognizes that no determination of form and quantity of methamphetamine involved in the “lesser-included offense” of “possession” is required.

**No. 8 — FORM AND QUANTITY OF  
METHAMPHETAMINE**

If you find the defendant guilty of

- the “methamphetamine conspiracy” offense charged in **Count 1**,  
and/or
- the “possession with intent to distribute methamphetamine” offense  
charged in **Count 2**,

then you must determine beyond a reasonable doubt the form and quantity of any methamphetamine involved in each such offense for which she can be held responsible.<sup>30</sup>

You do not need to determine the form or quantity of methamphetamine involved in the “lesser-included offense” of “possession of methamphetamine,” if you find defendant Lopez guilty of that offense.

***Responsibility***

**A defendant guilty of the “methamphetamine conspiracy”** charged in **Count 1** of the Indictment is responsible for:

- any methamphetamine that she actually distributed or agreed to  
distribute during the course of the conspiracy

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<sup>30</sup> In prior “drug quantity” instructions, I have stated that the jurors must determine whether the offense actually involved the illegal drug charged in the Indictment. However, the jurors have already made that determination by convicting the defendant of a charged drug offense. *See* Instruction No. 5.

- any methamphetamine that she personally used or acquired for personal use from a co-conspirator
- any methamphetamine that fellow conspirators actually distributed or agreed to distribute during the conspiracy that was reasonably foreseeable as a necessary or natural consequence of the conspiracy

**A defendant guilty of the “possession with intent to distribute methamphetamine” offense charged in Count 2 of the Indictment:**

- is responsible for any methamphetamine that she possessed with intent to distribute, *but*
- is *not* responsible for methamphetamine that she acquired or possessed only for her own personal use<sup>31</sup>

### ***Forms Of Methamphetamine***

Each offense charged in the Indictment allegedly involved either or both “methamphetamine mixture” and “actual (pure) methamphetamine.”

- You must determine the quantity of any form of methamphetamine that you find was involved in a charged offense

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<sup>31</sup> The parties inadvertently included the same bullet points concerning responsibility for “possession with intent to distribute” as for the “methamphetamine conspiracy.” See Joint Proposed Jury Instruction No. 7. “[D]rugs acquired for personal use are not relevant conduct when [the] charge is for possession with intent to distribute.” *United States v. Payton*, 636 F.3d 1027, 1047 (8th Cir. 2011) (quoting *United States v. Kamerud*, 326 F.3d 1008, 1013 (8th Cir. 2003)).

- If you find that a charged offense involved both “methamphetamine mixture” and “actual (pure) methamphetamine,” then you must determine the total quantity of each form of methamphetamine, even if the “actual (pure) methamphetamine” was contained in a “methamphetamine mixture”

***Quantities Of Methamphetamine***

**If you find the defendant guilty of the “methamphetamine conspiracy,”** charged in **Count 1**, you will answer the following questions in the Verdict Form:

Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the “methamphetamine conspiracy” offense charged in <b>Count 1</b> of the Indictment, please indicate (a) which one or more forms of methamphetamine were involved in the conspiracy, and (b) in the column below each such form of methamphetamine, the quantity of that form of methamphetamine for which she is responsible, as explained in <b>Instruction No. 8</b>.</i>	
(a)	___ methamphetamine mixture 	___ actual (pure) methamphetamine 
(b)	___ 500 grams or more	___ 50 grams or more
	___ 50 grams or more, but less than 500 grams	___ 5 grams or more, but less than 50 grams
	___ less than 50 grams	___ less than 5 grams

**If you find the defendant guilty of the “possession with intent to distribute methamphetamine” offense,** charged in **Count 2**, you will answer the following questions in the Verdict Form:

Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the “possession with intent to distribute methamphetamine” offense charged in <b>Count 2</b> of the Indictment in <b>Step 1</b>, please indicate (a) the form or forms of any methamphetamine involved in the offense and (b) in the column below “actual (pure) methamphetamine,” the quantity of that form of methamphetamine, if any, involved in the offense for which she is responsible, as explained in <b>Instruction No. 8</b>.</i>	
(a)	___ methamphetamine mixture	___ actual (pure) methamphetamine ↓
(b)		___ 5 grams or more
		___ less than 5 grams

The following conversion table may be helpful:

POUNDS/OUNCES	GRAMS
1 lb.	453.6 g. (0.4536 kilogram)
2.2 lb.	1,000 g. (1 kilogram)
1 oz.	28.34 g. (0.028 kilogram)

At the end of your deliberations, if you have found the defendant guilty of an offense charged in the Indictment, you will check the appropriate blanks in the Verdict Form for that offense to indicate

- the form or forms of methamphetamine, and
- the quantity of any form of methamphetamine involved in that offense for which you find the defendant is responsible.

## No. 9 — DEFINITION OF EVIDENCE<sup>32</sup>

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did

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<sup>32</sup> My “plain language” jury instructions. *See* 8th Cir. Criminal Model 1.03 (2014).

- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
  - An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide.<sup>33</sup>

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

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<sup>33</sup> See 8th Cir. Civil Model 1.03 (2014) (modified) and 9th Cir. Criminal Model 1.9 (modified); *but see* 8th Cir. Criminal Model 1.04 (suggesting that definitions of direct and circumstantial evidence are ordinarily not required).

## No. 10 — TESTIMONY OF WITNESSES<sup>34</sup>

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the witness's

- Opportunity to have seen and heard what happened
- Motives for testifying
- Interest in the outcome of the case
- Drug or alcohol use or addiction, if any
- The reasonableness of the witness's testimony
- Memory. Memory is not an exact recording of past events and witnesses may misremember events and conversations. Scientific research has established
  - that human memory is not at all like video recordings that a witness can simply replay to remember precisely what happened
  - that when a witness has been exposed to statements, conversations, questions, writings, documents, photographs, media reports, and opinions of others, the accuracy of their memory may be affected and distorted

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<sup>34</sup> My new “stock” jury instruction on “testimony,” which tries to take into account the teachings of social science regarding memory and eyewitness testimony. *See* 8th Cir. Criminal Models 1.05 and 3.04 (2014). I do not give, and for many years have not given, separate “credibility” and “impeachment” instructions.

- that a witness's memory, even if testified to in good faith, and with a high degree of confidence, may be inaccurate, unreliable, and falsely remembered; thus, human memory can be distorted, contaminated, or changed, and events and conversations can even be falsely imagined
- that distortion, contamination, and falsely imagined memories may happen at each of the three stages of memory: acquisition (perception of events); storage (period of time between acquisition and retrieval); and retrieval (recalling stored information).
- Demeanor. Scientific research has established
  - that there is not necessarily a relationship between how confident witnesses are about their testimony and the accuracy of their testimony; thus, less confident witnesses may be more accurate than confident witnesses
  - that common cultural cues, like shifty eyes, shifty body language, the failure to look one in the eye, grimaces, stammering speech, and other mannerisms, are not necessarily correlated to witness deception or false or inaccurate testimony

In evaluating a witness's testimony, also consider the following:

- Any differences between what the witness says now and said earlier
- Any inconsistencies between the witness's testimony and any other evidence that you believe

- Whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- Any other factors that you find bear on believability or credibility

If the defendant testifies,

- you should judge her testimony in the same way that you judge the testimony of any other witness<sup>35</sup>

You should not give any more or less weight to a witness's testimony just because the witness is

- a public official or law enforcement officer
- an expert<sup>36</sup>

You may give any witness's opinion<sup>37</sup> whatever weight you think it deserves, but you should consider

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<sup>35</sup> Because this language is conditional (“*If* a defendant testifies . . .”), I believe that it is permissible to include it, whether or not either defendant knows at this time whether he will testify.

<sup>36</sup> I have included my stock instructions concerning “experts,” even though I do not know if there will be any expert testimony in this case.

<sup>37</sup> The factors relevant to determination of the weight to give a witness's opinions are essentially the same, whether the witness is a “lay” witness or an “expert” witness. *See* 8th Cir. Criminal Model 4.10 (2014) (opinions of experts); 8th Cir. Criminal Model 3.04 (credibility of witnesses); FED. R. EVID. 701 (basis for lay opinions); FED. R. EVID.

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

You must consider with greater caution and care the testimony, if any, of a witness who is testifying

- that he or she participated in the charged offense, or
- after a promise from the prosecution not to use that witness's testimony, to a grand jury or at this trial, against that witness in a criminal case, or
- pursuant to a plea agreement<sup>38</sup>
  - The plea agreement may be a "cooperation" plea agreement that provides that the prosecution may recommend a less severe sentence if the prosecutor believes that the witness has provided "substantial assistance"
  - A judge cannot reduce a sentence for "substantial assistance" unless the prosecution asks the judge to do so, but if the

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702 (bases for expert opinions). I do not give separate "credibility" instructions for expert witnesses.

<sup>38</sup> The parties have indicated that an "informant" instruction does not need to be included in the "greater caution and care" instruction.

prosecution does ask, the judge decides if and how much to reduce the witness's sentence

It is for you to decide

- what weight you think the testimony of such a witness deserves, and
- whether or not such a witness's testimony has been influenced by
  - the desire to please the prosecution
  - any promises by the prosecution
  - any payment or other benefit provided by the prosecution, or
  - a plea agreement<sup>39</sup>

Remember, it is your exclusive right to give any witness's testimony whatever weight you think it deserves.

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<sup>39</sup> Compare 8th Cir. Criminal Model 4.04 (2014).

## No. 11 — OBJECTIONS<sup>40</sup>

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

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<sup>40</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.03 (2014) (numbered ¶ 2).

## No. 12 — BENCH CONFERENCES<sup>41</sup>

During the trial it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

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<sup>41</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.07 (2014).

### No. 13 — NOTE-TAKING<sup>42</sup>

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them
- If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence
- An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations

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<sup>42</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.06A (2014).

## No. 14 — CONDUCT OF JURORS DURING TRIAL<sup>43</sup>

You must decide this case *solely* on the evidence and the law in these Instructions and any additional written or oral instructions that I may give. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to begin your deliberations.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

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<sup>43</sup> My “stock” jury instructions. See 8th Cir. Criminal Model 1.08 (2014).

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, Twitter, or Instagram, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on “implicit biases.” As we discussed during jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes—that is, “implicit biases”—that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence and the instructions that I give you. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.<sup>44</sup>
- A Verdict Form is attached to these Instructions. A Verdict Form is simply a written notice of your decision. After your deliberations, if you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or

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<sup>44</sup> My “stock” instruction on “implicit bias.”

blanks for each question. You will all sign that copy to indicate that you agree with the verdict and that it is unanimous. Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict.

- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

## No. 15 — DUTY TO DELIBERATE<sup>45</sup>

A verdict must represent the careful and impartial judgment of each of you. However, before you make that judgment, you must consult with one another and try to reach agreement, if you can do so consistent with your individual judgment.

- Don't give up your honest beliefs just because others think differently or because you simply want to be finished with the case
- On the other hand, do not hesitate to re-examine your own views and to change your opinions, if you are convinced that they are wrong
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence and the instructions that I give you
- You must consider all of the evidence bearing on each question before you
- Take all the time that you feel is necessary

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<sup>45</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 3.12 (2014).

- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case

## No. 16 — DUTY DURING DELIBERATIONS<sup>46</sup>

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of one or more offenses, I will decide what her sentence should be.
- Communicate with me by sending me a note through a CSO. The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant’s race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to her race, color, religious beliefs, national origin, or sex. To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read

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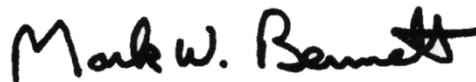
<sup>46</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 3.12 (2014).

that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your verdict.

- Complete the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 25th day of May, 2016.



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MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELIZABETH LOPEZ,

Defendant.

No. CR 15-4051-MWB

**COURT’S PROPOSED  
VERDICT FORM  
(12/18/15 VERSION)**

As to defendant Elizabeth Lopez, we, the Jury, find as follows:

<b>COUNT 1: THE ALLEGED “METHAMPHETAMINE CONSPIRACY” OFFENSE</b>		<b>VERDICT</b>
<b>Step 1: Verdict</b>	On the “methamphetamine conspiracy” offense, charged in <b>Count 1</b> of the Indictment and explained in <b>Instruction No. 5</b> , please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the questions in Step 2. Instead, please go on to consider your verdict on Count 2 in the next section of this Verdict Form.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty
<b>Step 2: Form and Quantity of Methamphetamine</b>	<i>If you found the defendant “guilty” of the “methamphetamine conspiracy” offense charged in Count 1 of the Indictment in Step 1, please indicate (a) which one or more forms of methamphetamine were involved in the conspiracy, and (b) in the column below each such form of methamphetamine, the quantity of that form of methamphetamine for which she is responsible, as explained in Instruction No. 8. (When you have answered the questions in this step, please go on to consider your verdict on Count 2 in the next section of this Verdict Form.)</i>	
(a)	<input type="checkbox"/> methamphetamine mixture 	<input type="checkbox"/> actual (pure) methamphetamine 
(b)	<input type="checkbox"/> 500 grams or more	<input type="checkbox"/> 50 grams or more
	<input type="checkbox"/> 50 grams or more, but less than 500 grams	<input type="checkbox"/> 5 grams or more, but less than 50 grams
	<input type="checkbox"/> less than 50 grams	<input type="checkbox"/> less than 5 grams

<b>COUNT 2: THE ALLEGED “POSSESSION WITH INTENT TO DISTRIBUTE” OFFENSE</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	On the charge of “possession with intent to distribute methamphetamine,” as charged in <b>Count 2</b> of the Indictment and explained in <b>Instruction No. 6</b> , please mark your verdict. <i>(If you find the defendant “guilty,” please answer the question in Step 2. If you find the defendant “not guilty” or answer “no verdict,” please skip to Step 3.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> No Verdict
<b>Step 2:</b> Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the “possession with intent to distribute methamphetamine” offense charged in Count 2 of the Indictment in Step 1, please indicate (a) which one or more forms of methamphetamine were involved in that offense, and (b) in the column below “actual (pure) methamphetamine,” the quantity of that form of methamphetamine, if any, involved in the offense for which she is responsible, as explained in Instruction No. 8. (When you have completed this step, please sign the Verdict Form and notify the Court Security Officer (CSO) that you have reached a verdict. Do not consider Step 3.)</i>	
(a)	<input type="checkbox"/> methamphetamine mixture	<input type="checkbox"/> actual (pure) methamphetamine ↓
(b)		<input type="checkbox"/> 5 grams or more
		<input type="checkbox"/> less than 5 grams
<b>Step 3:</b> “Lesser-Included Offense” of “Possession”	<i>If you found the defendant “not guilty” or answered “no verdict” in Step 1, please indicate your verdict on the “lesser-included offense” of “possession of methamphetamine,” as explained in Instruction No. 7. (After completing this Step, please sign the Verdict Form and notify the Court Security Officer (CSO) that you have reached a verdict.)</i>	
	<input type="checkbox"/> Not Guilty	<input type="checkbox"/> Guilty
<b>CERTIFICATION</b>		
By signing below, each juror certifies the following: (1) that consideration of the defendant’s race, color, religious beliefs, national origin, or sex was not involved in reaching the juror’s individual decision, <i>and</i> (2) that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the defendant’s race, color, religious beliefs, national origin, or sex.		

\_\_\_\_\_ Date

\_\_\_\_\_ Foreperson

\_\_\_\_\_ Juror

Juror	Juror

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELIZABETH LOPEZ,

Defendant.

No. CR 15-4051-MWB

**SUPPLEMENTAL  
INSTRUCTION  
TO THE JURY**

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## No. 1 — BUYER-SELLER RELATIONSHIP

As to the alleged methamphetamine conspiracy, in **Count 1**, to help you decide whether the prosecution has proved that there was an agreement to distribute methamphetamine, as required by element *one* in Instruction No. 5, you should also consider the following:

A simple buyer-seller relationship does not establish an agreement to distribute methamphetamine; rather, the prosecution must prove that the buyer and seller had an agreement to further distribute the methamphetamine.

- A person who possesses methamphetamine based on a single transaction, solely for their own personal use and not for redistribution to others, is not a co-conspirator, without more evidence
- If you find the defendant was involved in multiple sales or purchases of methamphetamine in quantities for resale, then there is not a simple buyer-seller relationship

This supplemental instruction should be taken together with all of the other instructions that I previously gave to you. You must consider as a whole the instructions that I gave you at the beginning of the trial and the supplemental instruction that I am giving you now.

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELIZABETH LOPEZ,

Defendant.

No. CR 15-4051-MWB

**COURT'S PROPOSED  
SUPPLEMENTAL INSTRUCTION  
TO THE JURY  
(05/24/16 "ANNOTATED"  
VERSION)**

## No. 2 — BUYER-SELLER RELATIONSHIP

As to the alleged methamphetamine conspiracy, in **Count 1**, to help you decide whether the prosecution has proved that there was an agreement to distribute methamphetamine, as required by element *one* in Instruction No. 5, you should also consider the following:

A simple buyer-seller relationship does not establish an agreement to distribute methamphetamine; rather, the prosecution must prove that the buyer and seller had an agreement to further distribute the methamphetamine.<sup>47</sup>

This supplemental instruction should be taken together with all of the other instructions that I previously gave to you. You must consider as a whole the

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<sup>47</sup> The defendant requested a more truncated “buyer-seller” instruction in Joint Proposed Jury Instruction No. 5 (“proof of a buyer-seller relationship, without more, is inadequate to tie defendant to a larger conspiracy”). The problems with the defendant’s proposed instruction are that it does not explain what “more” would suffice or what the relevance of a “larger” or “smaller” conspiracy might be. *Also, as I indicated, supra, note 1, I am considering whether to include this instruction from the beginning (as here), or only as a “supplemental” instruction, if I conclude that the evidence warrants it. See, e.g., United States v. Peeler, 779 F.3d 773, 776 (8th Cir. 2015) (“[B]uyer-seller relationship cases involve only evidence of a single transient sales agreement and small amounts of drugs consistent with personal use.” (quoting *United States v. Huggans, 650 F.3d 1210, 1222 (8th Cir. 2011) (quotation omitted), cert. denied, --- U.S. ---- (2012)*); *United States v. Figueroa, 900 F.2d 1211, 1216-17 (8th Cir. 1990) (a buyer-seller instruction is not appropriate when there is evidence of multiple drug transactions, as opposed to a single isolated sale); United States v. Turner, 975 F.2d 490, 497-98 (8th Cir. 1992) (the receipt of large quantities of drugs is evidence of an intent to distribute rather than a single buyer-seller relationship). I will give this instruction as a “supplemental” instruction, if the evidence at trial warrants it.**

instructions that I gave you at the beginning of the trial and the supplemental instruction that I am giving you now.<sup>48</sup>

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<sup>48</sup> *Compare* 8th Cir. Criminal Model 10.01 (2014) (response to juror question necessitating supplemental instructions).