

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL CHANTELL BRUCE,

Defendant.

No. CR 05-2018-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

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

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

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

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

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

INSTRUCTION NUMBER _____

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

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

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

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

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

Throughout this case and these instructions, the terms “cocaine base” and “crack cocaine” are used interchangeably and refer to the same substance.

INSTRUCTION NUMBER _____

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

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

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

INSTRUCTION NUMBER _____

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

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

You have heard testimony from witnesses who hope to receive reduced sentences on pending criminal charges in return for cooperation with the prosecution in this case. These witnesses entered into agreements with the government providing that if they provide substantial assistance to the government in its investigation of crimes, the prosecutor could file a motion for a reduction of their sentences. Certain witnesses are subject to a mandatory minimum sentence, that is, a sentence that the law provides must be of a certain minimum length. If the prosecutor handling a witness’s case believes that witness provided substantial assistance, the prosecutor can file in the court in which the charges are pending against the witness a motion to reduce that witness’s sentence below the mandatory minimum sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney,

(CONTINUED)

INSTRUCTION NUMBER ____ (Cont'd)

files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and, if so, how much to reduce it. The witness's testimony was received in evidence and may be considered by you. You may give the testimony of each witness such weight as you think it deserves. Whether or not certain testimony by a witness was influenced by that witness's hope of receiving a reduced sentence is for you to decide.

You have heard evidence that some witnesses were once convicted of a crime. You may use that evidence only to help you decide whether to believe these witnesses and how much weight to give their testimony.

INSTRUCTION NUMBER _____

You have heard evidence claiming witnesses made statements before this trial while not under oath which were inconsistent with what the witness said in this trial. Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

INSTRUCTION NUMBER _____

You have heard evidence claiming that witnesses made statements before this trial while under oath which were inconsistent with what these witnesses said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe the witnesses who made the statements. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

INSTRUCTION NUMBER _____

You have heard evidence that Charles Anthony Watson, Eric Sallis, Dontay Hoosman, Sarah Hoosman-Hill and Detonious Neil Washington have plead guilty to or been found guilty of a crime which arose out of the same events for which the defendant is on trial here. You must not consider these findings of guilt as any evidence of this defendant's guilt. You may consider the findings of guilt as to these witnesses only for the purpose of determining how much, if at all, to rely upon these witnesses' testimony. If a witness pled guilty, that plea may also be used to show the witness's acknowledgment of participation in the offense.

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

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

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

Witnesses have testified that they viewed a photograph of the defendant which was shown to them by the police. The police collect pictures of many people from many different sources and for many different purposes. The fact that the police had the defendant's picture does not mean that he committed this crime, and it must have no effect on your consideration of the case.

INSTRUCTION NUMBER _____

The Indictment in this case charges the defendant with four separate offenses.

Under Count 1, the Indictment charges that between about May 25, 2000, and continuing through about July 2001, the defendant did knowingly and unlawfully combine, conspire, confederate and agree with others, known and unknown, to (1) possess with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of cocaine within 1,000 feet of a playground, that is, Highland Square Park in Waterloo, Iowa, or (2) to distribute 50 grams or more of a mixture or substance containing a detectable amount of cocaine base, commonly called “crack cocaine.”

Under Count 2, the Indictment charges that during about May 2000, the defendant did knowingly and unlawfully combine, conspire, confederate and agree with others, known and unknown, to:

(1) use and carry during and in relation to a robbery and a drug trafficking crime for which he may be prosecuted in a court of the United States (the crime of a robbery affecting interstate commerce; the crimes of distribution and possession with intent to distribute cocaine; and the crime of conspiracy to distribute and possess with intent to distribute cocaine), or

(2) possess in furtherance of a robbery and a drug trafficking crime for which he may be prosecuted in a court of the United States (the crime of a robbery affecting interstate commerce; the crimes of distribution and possession with intent to distribute cocaine; and the crime of conspiracy to distribute and possess with intent to distribute cocaine),

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INSTRUCTION NUMBER _____ (Cont'd)

one or more firearms, to wit: (1) a .357 Colt Lawman, serial number J58001; and (2) a .44 Desert Eagle, serial number 26500.

Under Count 3, the Indictment charges the defendant with being a person previously convicted of one or more crimes punishable by imprisonment for a term exceeding one year, who knowingly possessed, in and affecting commerce a firearm, that is: a .357 Colt Lawman, serial number J58001.

Under Count 4, the Indictment charges that the defendant, after having been previously convicted of a misdemeanor crime of domestic violence, did knowingly and unlawfully possess, in and affecting commerce, a firearm, that is: a .357 Colt Lawman, serial number J58001.

The defendant has pleaded not guilty to the crimes charged in Counts 1 through 4.

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

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

INSTRUCTION NUMBER _____

The crime of conspiracy, as charged in Count 1, has three essential elements which are:

One, between about May 25, 2000, and continuing through about July 2001, two or more persons reached an agreement or came to an understanding to commit one or more of the following offenses:

Object 1: To possess with intent to distribute a mixture or substance containing a detectable amount of cocaine; or

Object 2: To distribute a mixture or substance containing a detectable amount of cocaine base.

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

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

To assist you in determining whether there was an agreement or understanding to commit the crimes of possessing with intent to distribute a mixture or substance containing a detectable amount of cocaine (Object 1) or to distribute a mixture or substance containing a detectable amount of cocaine base (Object 2), the elements of these crimes are set out in the next instruction, Instruction Number _____.

For you to find the defendant guilty of conspiracy, the government must prove all of the essential elements beyond a reasonable doubt. If the government failed to prove any essential element beyond a reasonable doubt, then you must find the defendant not guilty.

INSTRUCTION NUMBER _____

With regard to the crime stated as Object 1 of Count 1 of the Indictment, you are instructed that the crime of possession with intent to distribute a mixture or substance containing a detectable amount of cocaine has three essential elements which are:

- (1) Possession of cocaine by a person;
- (2) Who knew that it was cocaine; and
- (3) Who intended to distribute some or all of the cocaine to another person.

With regard to the crime stated as Object 2 of Count 1 of the Indictment, you are instructed that the crime of distributing a mixture or substance containing a detectable amount of cocaine base has two essential elements which are:

- (1) Intentional transfer of cocaine base by a person; and
- (2) Who, at the time of the transfer, knew that cocaine base was a controlled substance.

Keep in mind that Count 1 of the Indictment charges a *conspiracy* to possess with intent to distribute cocaine or to distribute cocaine base and not that the possession with intent to distribute or the distribution was actually committed.

You are instructed that it is not necessary for the government to prove a conspiracy to both possess with intent to distribute a mixture or substance containing a detectable amount of cocaine (Object 1) and to distribute a mixture or substance containing a detectable amount of cocaine base (Object 2). It would be sufficient if the government proves, beyond a reasonable doubt, either Object 1 or Object 2 of the conspiracy. However, in that event, in order to return a verdict of guilty, you must unanimously agree

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

upon which one or more of the offenses was the object of the conspiracy. If you can not agree in that manner, you must find the defendant not guilty.

INSTRUCTION NUMBER _____

You are instructed as a matter of law that cocaine and cocaine base are Schedule II controlled substances. You must ascertain whether or not the substances in question as to Count 1 were cocaine or cocaine base. In so doing, you may consider all the evidence in the case which may aid in the determination of that issue.

In considering whether the government has met its burden of proving the crime charged in Count 1 of the Indictment, you are further instructed as follows:

In determining whether the defendant is guilty of conspiracy to possess cocaine with intent to distribute or distribute cocaine base as charged in Count 1, the government is not required to prove that the amount or quantity of cocaine or cocaine base was as charged in the Indictment. The government need only prove, beyond a reasonable doubt, that there was a measurable amount of cocaine (Object 1) or cocaine base (Object 2).

However, if you find the defendant guilty of the offense of possession with intent to distribute cocaine as charged under Count 1 (Object 1), you will need to determine whether the quantity of cocaine involved in the offense was 500 grams or more; 50 grams or more but less than 500 grams; or less than 50 grams. The burden of proof is on the government to establish the quantity beyond a reasonable doubt.

If you find the defendant guilty of the offense of distribution of cocaine base as charged under Count 1 (Object 2), you will need to determine whether the quantity of cocaine base involved in the offense was 50 grams or more; 5 grams or more but less than 50 grams; or less than 5 grams. The burden of proof is on the government to establish the quantity beyond a reasonable doubt.

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INSTRUCTION NUMBER _____ (Cont'd)

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

For your information, one gram contains 1,000 milligrams, one ounce equals 28.35 grams, one pound equals 453.6 grams and one kilogram contains 1,000 grams.

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

In Count 1, the government claims the possession of cocaine with intent to distribute, that is Object 1 of the conspiracy, occurred within 1,000 feet of the real property comprising a playground.

A “playground” is defined as any outdoor facility, including any adjacent parking lot, intended for recreation, open to the public and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets and teeterboards. Children do not need to be near or around the playground at the time of the offense for the property to be a “playground.” The “playground” in question here is alleged to be Highland Square Park in Waterloo, Iowa. It is for you to determine whether Highland Square Park fits the definition of a “playground.”

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

INSTRUCTION NUMBER _____

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

One, during about May 2000, two or more persons reached an agreement or came to an understanding to commit one or more of the following offenses:

Object 1: To use and carry one or more firearms during and in relation to a robbery or a drug trafficking crime; or

Object 2: To possess one or more firearms in furtherance of a robbery or a drug trafficking crime.

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

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

To assist you in determining whether there was an agreement or understanding to commit the crime of using and carrying a firearm during and in relation to a robbery or a drug trafficking crime (Object 1) or possessing one or more firearms in furtherance of a robbery or a drug trafficking crime (Object 2), the elements of the crime of robbery are set out in the next instruction, Instruction Number _____.

To assist you in determining whether there was an agreement or understanding to commit the crime of using and carrying a firearm during and in relation to a robbery or drug trafficking crime (Object 1) or possessing one or more firearms in furtherance

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

of a robbery or a drug trafficking crime, you are advised that a “drug trafficking crime” includes but is not limited to the crimes of distribution and possession with intent to distribute cocaine the definitions of which can be found in Instruction Number _____ and the crime of conspiracy to distribute and possess with intent to distribute cocaine the definition of which can be found in Instruction Number _____.

For you to find the defendant guilty of conspiracy, the government must prove all of the essential elements beyond a reasonable doubt. If the government failed to prove any essential element beyond a reasonable doubt, then you must find the defendant not guilty.

INSTRUCTION NUMBER _____

With regard to Objects 1 and 2 of Count 2, you are instructed that the elements of robbery are:

- One,* that a person knowingly obtained or took the property of another, or from the presence of another;

- Two,* that the person took the property against the victim's will, by means of actual or threatened force or violence or fear of injury, whether immediately or in the future; and

- Three,* That, as a result of the person's actions, commerce or an item moving in interstate commerce, was delayed, obstructed or affected in any way or degree.

“Property” includes money and other tangible things of value, including controlled substances.

“Fear” means an apprehension, concern or anxiety about physical violence or harm or economic loss or harm that is reasonable under the circumstances.

“Obstructs, delays or affects interstate commerce” means any action which, in any manner or to any degree, interferes with, changes or alters the movement or transportation or flow of goods, merchandise, money or other property, including controlled substances, in interstate commerce.

It is not necessary for the government to prove any particular degree or amount of effect on interstate commerce. The interstate commerce affected may be legal or illegal.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

The law does not require that the defendant intended or anticipated an affect on interstate commerce. You may find the effect is a natural consequence of his actions.

You are instructed that the parties have stipulated that the possession and sale of cocaine and the theft or robbery of cocaine impacts interstate commerce.

Keep in mind that Count 2 of the Indictment charges a *conspiracy* to use and carry one or more firearms during and in relation to a robbery or a drug trafficking crime or possess one or more firearms in furtherance of a robbery or a drug trafficking crime, and not that the defendant actually used, carried or possessed the firearms in furtherance of a robbery or a drug trafficking crime.

You are instructed that it is not necessary for the government to prove a conspiracy to both carry and use a firearm during and in relation to a robbery or a drug trafficking crime (Object 1) and to possess a firearm in furtherance of a robbery or a drug trafficking crime (Object 2). It would be sufficient if the government proves, beyond a reasonable doubt, either Object 1 or Object 2 of the conspiracy. However, in that event, in order to return a verdict of guilty, you must unanimously agree upon which one or more of the offenses was the object of the conspiracy. If you can not agree in that manner, you must find the defendant not guilty.

INSTRUCTION NUMBER _____

The term “firearm” means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

The phrase “used a firearm” means that the firearm was actively employed in the course of the commission of the robbery or the drug trafficking crime. You may find that the firearm was used during the commission of the robbery or the drug trafficking crime if you find that it was brandished, displayed or fired or attempted to be fired.

You may find that a firearm was “carried” during the commission of the robbery or the drug trafficking crime if you find that the defendant had a firearm on his person or was transporting a firearm in a vehicle.

Possession of a firearm in furtherance of a robbery or drug trafficking crime means that the possession must in some way advance the underlying crime.

INSTRUCTION NUMBER _____

In considering whether the government has met its burden of proving the offense of conspiracy as alleged in Counts 1 and 2 of the Indictment, you are further instructed as follows:

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

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

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

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

(CONTINUED)

INSTRUCTION NUMBER ____ (Cont'd)

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

The crime of being a felon in possession of a firearm in and affecting commerce as charged in Count 3 of the Indictment has three essential elements, which are:

- One,* the defendant was convicted of a felony, that is, a crime punishable by imprisonment for a term exceeding one year;
- Two,* on or about May 25, 2000, the defendant knowingly possessed a firearm, that is, a .357 Colt Lawman; and
- Three,* at some time prior to his possession of the firearm, the firearm was transported across a state line.

If you unanimously and beyond a reasonable doubt find the government proved all of these essential elements, then you must find the defendant guilty of the crime of being a felon in possession of a firearm in and affecting commerce; otherwise, you must find the defendant not guilty.

INSTRUCTION NUMBER _____

In considering whether the government has met its burden of proving the crime charged in Count 3 of the Indictment, you are further instructed as follows:

In considering the first element of the crime of being a felon in possession of a firearm in and affecting commerce, you are instructed the parties have stipulated that the defendant has one or more convictions for a crime that is punishable by imprisonment for a term exceeding one year. You are to consider the parties' stipulation for this purpose only.

It is not necessary for the government to prove the defendant knew that the firearm charged in the Indictment had traveled in interstate commerce, he himself personally transported the firearm in interstate commerce or that he intended to violate a particular statute. Likewise, it is not necessary for the government to prove that the defendant knew that it was illegal to have the firearm in his possession within the meaning of the law. Nor is it necessary for the government to prove who owned the firearm at any time. The statute involved speaks in terms of possession, not ownership.

INSTRUCTION NUMBER _____

The crime of possession of a firearm after having been previously convicted of a misdemeanor crime of domestic violence as charged in Count 4 of the Indictment has three essential elements, which are:

- One,* on or about May 25, 2000, the defendant knowingly possessed a firearm, that is, a .357 Colt Lawman, serial number J58001;
- Two,* prior to possessing the firearm, the defendant had been convicted of a misdemeanor crime of domestic violence; and
- Three,* the firearm had been transported across a state line at some time prior to the defendant's possession of a firearm.

If you unanimously and beyond a reasonable doubt find the government proved all of these essential elements, then you must find the defendant guilty of the crime of possession of a firearm after having been convicted of a misdemeanor crime of domestic violence; otherwise, you must find the defendant not guilty of this offense.

You are instructed that the parties have stipulated that prior to May 25, 2000, the defendant had been convicted of a misdemeanor crime of domestic violence.

INSTRUCTION NUMBER _____

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

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

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

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

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

INSTRUCTION NUMBER _____

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

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

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

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

INSTRUCTION NUMBER _____

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

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

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

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

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

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

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

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

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

INSTRUCTION NUMBER _____

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

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on answers to the Verdict Forms, your foreperson will fill out the Forms, sign and date them and advise the marshal or court security officer that you are ready to return to the courtroom.

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

DATE

LINDA R. READE

JUDGE, U. S. DISTRICT COURT

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL CHANTELL BRUCE,

Defendant.

No. CR 05-2018-LRR

VERDICT FORM - COUNT 1

We, the Jury, find the defendant, Michael Chantell Bruce, _____ of
Not Guilty / Guilty
the crime of conspiracy as charged in Count 1 of the Indictment.

Note: If you unanimously find the defendant guilty of Count 1,
have your foreperson write “guilty” in the above blank space.

If you unanimously find the defendant not guilty of Count 1,
have your foreperson write “not guilty” in the above blank
space.

If you found the defendant guilty of conspiracy as charged in
Count 1 of the Indictment, please answer Question 1:

Question 1: Please put a (✓) mark on the line before the crime or crimes you unanimously find, beyond a reasonable doubt were the object or objects of the conspiracy charged in Count 1 of the Indictment.

_____ To possess with intent to distribute a mixture or substance containing a detectable amount of cocaine

_____ To distribute a mixture or substance containing a detectable amount of cocaine base

If you unanimously found, beyond a reasonable doubt, that one object of the conspiracy was to possess with intent to distribute a mixture or substance containing a detectable amount of cocaine, please answer Questions 2 and 3, unanimously and beyond a reasonable doubt.

Question 2: Do you unanimously find, beyond a reasonable doubt, that the distribution of a mixture or substance containing a detectable amount of cocaine took place within 1,000 feet of the real property comprising a playground, that is Highland Square Park?

_____ Yes

_____ No

Question 3: Put a (✓) mark before the quantity of cocaine you unanimously find, beyond a reasonable doubt, was involved in Object 1 of Count 1 of the Indictment.

- _____ 500 grams or more of a mixture or substance containing a detectable amount of cocaine
- _____ 50 grams or more but less than 500 grams of a mixture or substance containing a detectable amount of cocaine
- _____ less than 50 grams of a mixture or substance containing a detectable amount of cocaine

If you unanimously found, beyond a reasonable doubt, that one object of the conspiracy was to distribute a mixture or substance containing a detectable amount of cocaine base, please answer Question 4, unanimously and beyond a reasonable doubt.

Question 4: Put a (✓) mark before the quantity of cocaine base you unanimously find, beyond a reasonable doubt, was involved in Object 2 of Count 1 of the Indictment.

- _____ 50 grams or more of a mixture or substance containing a detectable amount of cocaine base
- _____ 5 grams or more but less than 50 grams of a mixture or substance containing a detectable amount of cocaine base
- _____ less than 5 grams of a mixture or substance containing a detectable amount of cocaine base

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL CHANTELL BRUCE,

Defendant.

No. CR 05-2018-LRR

VERDICT FORM - COUNT 2

We, the Jury, find the defendant, Michael Chantell Bruce, _____ of
Not Guilty / Guilty
the crime of conspiracy as charged in Count 2 of the Indictment.

Note: If you unanimously find the defendant guilty of Count 2,
have your foreperson write “guilty” in the above blank space.

If you unanimously find the defendant not guilty of Count 2,
have your foreperson write “not guilty” in the above blank
space.

If you found the defendant guilty of conspiracy as charged in Count 2 of the Indictment, please answer the following questions:

Question 1: Please put a (✓) mark on the line before the crime or crimes you unanimously find, beyond a reasonable doubt were the object or objects of the conspiracy charged in Count 2 of the Indictment.

_____ To use and carry one or more firearms during and in relation to a robbery or a drug trafficking crime

_____ To possess one or more firearms in furtherance of a robbery or a drug trafficking crime.

Question 2: Please put a (✓) mark on the line before firearm or firearms you unanimously find, beyond a reasonable doubt defendant used, carried or possessed as charged in Count 2:

_____ A .357 Colt Lawman, serial number J58001

_____ A .44 Desert Eagle, serial number 26500

Question 3: If you unanimously found the defendant guilty of Count 2, which of the following offenses do you unanimously find beyond a reasonable doubt were involved:

_____ Robbery

_____ Distribution of cocaine

_____ Possession with intent to distribute cocaine

_____ Conspiracy to distribute cocaine

_____ Conspiracy to possess with intent to distribute cocaine

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL CHANTELL BRUCE,

Defendant.

No. CR 05-2018-LRR

VERDICT FORM - COUNT 3

We, the Jury, find the defendant, Michael Chantell Bruce, _____ of
Not Guilty / Guilty
the crime of being a felon in possession of a firearm, as charged in Count 3 of the
Indictment.

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL CHANTELL BRUCE,

Defendant.

No. CR 05-2018-LRR

VERDICT FORM - COUNT 4

We, the Jury, find the defendant, Michael Chantell Bruce, _____ of
Not Guilty / Guilty
the crime of possession of a firearm, after having been convicted of a misdemeanor crime
of domestic violence, as charged in Count 4 of the Indictment.

FOREPERSON

DATE