

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALLEN R. WILLIAMS and
ROBERT MCNAIRY,

Defendants.

No. CR 10-4083-MWB

**INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

INSTRUCTION NO. 1 - INTRODUCTION

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

In an Indictment, a Grand Jury has charged defendants Allen R. Williams and Robert McNairy with a “crack cocaine conspiracy” and various charges of “distribution of crack cocaine.” An Indictment is simply an accusation—it is not evidence of anything. Each defendant has pled not guilty, and each is presumed absolutely not guilty of each offense charged unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the guilt of each defendant on each offense charged 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, or stereotypes. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. 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 defendants Williams and McNairy, and not anyone else, are on trial. Also, each defendant is on trial *only* for the offenses charged against him in the Indictment, and not for anything else.

Each defendant is entitled to have the charges against him considered separately based solely on the evidence that applies to him. *Therefore, you must give separate consideration to each charge against each defendant and return a separate, unanimous verdict on each charge against each defendant.*

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.

INSTRUCTION NO. 2 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

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

- This presumption means that you must put aside all suspicion that might arise from a defendant's arrest, the charges, or the fact that he is here in court
- This presumption is enough, alone, for you to find a defendant not guilty
- This presumption remains with each defendant throughout the trial
- This presumption may be overcome only if the prosecution proves, beyond a reasonable doubt, all of the elements of an offense charged against a defendant.

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

- This burden never, ever shifts to a defendant to prove his innocence
- This burden means that the defendants do not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify

- This burden means that, if a defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict
- This burden means that you must find a defendant not guilty of any offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense

INSTRUCTION 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 either the prosecution or a defendant, keeping in mind that the defendants never, ever have the burden or duty to call any witnesses or to produce any evidence
- A reasonable doubt may arise from the prosecution's lack of evidence

The prosecution must prove each 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
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs

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

INSTRUCTION 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 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 for you to find a defendant guilty of that offense.

Nicknames

You may hear evidence that defendant Allen R. Williams sometimes goes by, is also known as, or identifies himself by the nickname “Tim,” and that defendant Robert McNairy sometimes goes by, is also known as, or identifies himself by the nickname “Rob.”

- The prosecution must prove beyond a reasonable doubt that a defendant was a person who committed a charged offense
- No defendant has to prove that he did not commit a charged offense, that someone else committed that offense, or that he is not the person identified by a certain nickname.

If the evidence leaves you with a reasonable doubt about whether a defendant is a person who committed a charged offense, then you must find him not guilty of that offense.

Timing

The Indictment alleges an approximate date for each charged offense. The prosecution does not have to prove that an offense occurred on an exact date, only that the offense was committed on a date reasonably close to the date alleged.

Location

You must decide whether a defendant's conduct occurred in the Northern District of Iowa. Sioux City and Woodbury County are in the Northern District of Iowa.

Crack cocaine

Crack cocaine is a "controlled substance."

- "Crack cocaine" is the street name for a form of cocaine base
- It is usually prepared by processing cocaine hydrochloride and sodium bicarbonate (baking soda)
- It usually appears in a lumpy, rocklike form

If you find that the substance involved in a particular Count was not crack cocaine, then you cannot convict a defendant of that Count, even if some other controlled substance was involved

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 had the power and the intention to control it

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

Distribution

A person distributed crack cocaine if the person transferred possession of the crack cocaine to another person. The prosecution does not have to prove that the crack cocaine was “sold” or that money or anything of value changed hands.

Verdict Form

A verdict form is attached to these Instructions.

- A verdict form is simply a written notice of your decision
- When 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.

* * *

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

INSTRUCTION NO. 5 - COUNT 1: THE CRACK COCAINE CONSPIRACY

Count 1 of the Indictment charges both defendants with a “crack cocaine conspiracy.” For you to find a defendant guilty of this “crack cocaine conspiracy” offense, the prosecution must prove beyond a reasonable doubt *all* of the following three elements against that defendant:

***One*, at some time between January 2010 and August 2010, in the Northern District of Iowa, two or more persons reached an agreement or understanding to distribute crack cocaine.**

A conspiracy is an agreement of two or more persons to commit a crime. The defendant may, but does not have to be, one of the original conspirators.

- The crime that the conspirators agreed to commit is an “objective” of the conspiracy
- The crime agreed upon does not actually have to be committed
- The agreement does not have to be written or formal
- The agreement does not have to involve every detail of the conspiracy

The Indictment charges that the “objective” of the conspiracy was distribution of crack cocaine. To help you decide whether distribution of crack cocaine was the “objective” of the conspiracy, you should consider the elements of that crime. The elements of the crime of “distribution” are the following:

- a person intentionally distributed a controlled substance to another, and

- at the time of the distribution, the person knew that he was distributing a controlled substance.

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

The defendant must have joined in the agreement at any time during its existence. The defendant joined the agreement even if he agreed to play only a minor role in it.

The defendant does 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, each of the following, alone, is not enough to show that a person joined the agreement:

- evidence that a person was merely present at the scene of an event
- evidence that a person merely acted in the same way as others
- evidence that a person merely associated with others
- evidence that a person who had no knowledge of a conspiracy acted in a way that advanced an objective of the conspiracy
- evidence that a person merely knew of the existence of a conspiracy

- evidence that a person merely knew that an objective of the conspiracy was being considered or attempted, or
- evidence that a person merely approved of the objectives of the conspiracy

Rather, the prosecution must prove that the person had some degree of knowing involvement in the conspiracy.

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

Without knowledge of the purpose of the conspiracy, the defendant cannot be guilty of the conspiracy offense, even if his acts furthered the conspiracy. The prosecution does not have to prove that the defendant knew that what he did was unlawful.

If the prosecution fails to prove all of these elements beyond a reasonable doubt as to a particular defendant, then you must find that defendant not guilty of the “crack cocaine conspiracy” offense charged in **Count 1** of the Indictment.

If you find a defendant guilty of this “crack cocaine conspiracy” offense, then you must also determine the quantity of any crack cocaine involved, as explained in Instruction No. 6.

INSTRUCTION NO. 6 - QUANTITY OF CRACK COCAINE INVOLVED IN THE CONSPIRACY

If you find a defendant guilty of the “crack cocaine conspiracy” offenses charged in **Count 1**, then you must determine the following beyond a reasonable doubt:

- whether the conspiracy actually involved crack cocaine, and
- the quantity of the crack cocaine involved for which that defendant can be held responsible

A defendant guilty of the “crack cocaine conspiracy” in **Count 1** is responsible for the following quantities of crack cocaine, if his conduct occurred during the course of the conspiracy:

- any crack cocaine that he actually distributed
- any crack cocaine that he agreed to distribute, and
- any crack cocaine that he personally used or acquired for personal use from a co-conspirator

A defendant guilty of the “crack cocaine conspiracy” offense in **Count 1** is also responsible for the following quantities of crack cocaine, if he could have reasonably foreseen that such quantities were a necessary or natural consequence of the conspiracy and such conduct occurred during the course of the conspiracy:

- any crack cocaine that fellow conspirators actually distributed
- any crack cocaine that fellow conspirators agreed to distribute

If you find that the “drug conspiracy” involved crack cocaine, then you must indicate in the Verdict Form whether the defendant in question can be held responsible for 28 grams or more of crack cocaine, or less than 28 grams of crack cocaine.

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, you will check the appropriate blank in the Verdict Form to indicate the quantity of any crack cocaine involved in the “crack cocaine conspiracy” for which a defendant guilty of that offense is responsible.

**INSTRUCTION NO. 7 - COUNT 2 THROUGH 6:
THE “DISTRIBUTION” OFFENSES**

Counts 2 through **6** of the Indictment charge either or both of the defendants with “distribution of crack cocaine” offenses. Some of these Counts charge both “personal commission” and “aiding and abetting” alternatives, and one charges that the offense occurred within 1,000 feet of a school or playground. The following chart summarizes these charges:

Count	Approximate Date	Defendant(s)	Alternative(s)
2	March 19, 2010	Allen R. Williams	personally distributed crack cocaine
3	March 25, 2010	Allen R. Williams, Robert McNairy	personally distributed and aided and abetted the distribution of crack cocaine
4	March 25, 2010	Robert McNairy	personally distributed and aided and abetted the distribution of crack cocaine within 1,000 feet of a playground or school
5	first offense on April 14, 2010	Allen R. Williams	personally distributed crack cocaine
6	second offense on April 14, 2010	Allen R. Williams	personally distributed crack cocaine

If the elements are proved, a defendant may be found guilty of personally committing a distribution offense, or aiding and abetting that offense, or both. However, you cannot find that the “proximity to a playground or school” alternative for **Count 4** has been proved, unless you first find that defendant McNairy personally committed that offense, aided and abetted that offense, or both personally committed and aided and abetted that offense.

Personal commission alternative

All five Counts of “distribution of crack cocaine” charge the defendant or defendants allegedly involved with personally committing the offense. For you to find a defendant guilty of “personally committing” a “distribution of crack cocaine” offense, the prosecution must prove beyond a reasonable doubt *both* of the following *two* elements against that defendant:

One, on or about the date alleged, the defendant intentionally distributed crack cocaine to another.

The prosecution must prove that the substance that the defendant distributed was, in fact, crack cocaine.

Two, at the time of the distribution, the defendant knew that what he was distributing was a controlled substance.

The defendant need not have known what the controlled substance was, if he knew that he was distributing some controlled substance.

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular defendant for a particular “distribution of crack cocaine” offense, then you must find that defendant not guilty of “personally committing” that offense.

Aiding and abetting alternative

Counts 3 and 4 charge, in the alternative, that the defendant or defendants charged “aided and abetted” each other or others to commit these “distribution of crack cocaine” offenses. A person may also be found guilty of an offense, even if that person did not personally do every act constituting that offense, if that person “aided and abetted” the commission of the offense by another person.

For you to find a defendant guilty of aiding and abetting a particular “distribution of crack cocaine” offense, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements:

***One*, on or about the date alleged, some person or persons committed the charged offense of distribution of crack cocaine.**

The prosecution must first prove that someone “personally committed” the charged offense, as explained above. It is not necessary that the other person or persons be convicted or even identified.

***Two*, before or at the time the charged offense was committed, the defendant knew that the charged offense was being committed or was going to be committed.**

The aider and abettor must have known that what the other person was distributing was a controlled substance. The aider and abettor need not have known what the controlled substance was, if he knew that the person personally committing the offense was distributing some controlled substance.

***Three*, the defendant knowingly acted in some way for the purpose of causing, encouraging, or aiding the other person to distribute crack cocaine, and must have intended that some or all of the crack cocaine would be distributed.**

The following, alone, are not enough to show that a defendant aided and abetted an offense:

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

- evidence that a person merely associated with others

A person who had no knowledge that a crime was being committed or was going to be committed, but who happened to act in a way that advanced some offense, did not thereby become an aider and abettor. The aider and abettor must have knowingly participated in the distribution of crack cocaine with the intent that the crack cocaine would be distributed.

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular defendant for a particular “distribution of crack cocaine” offense, then you must find that defendant not guilty of “aiding and abetting” that offense.

Proximity to a playground or school

Count 4 charges that the distribution of crack cocaine occurred within 1,000 feet of a playground or school. To prove the “proximity to a playground or school” alternative for this offense, in addition to proving all of the elements of either a “personal commission” or “aiding and abetting” alternative, or both, the prosecution must prove the following:

The distribution of crack cocaine occurred within 1,000 feet of a playground or school.

The Indictment alleges that the “playground” or “school” was Riverside Elementary School, Sioux City, Woodbury County, Iowa. You must decide whether Riverside Elementary School was a “playground” or “school.”

A “school” is the real property comprising a public or private elementary school

- School does not have to be in session

- Children do not need to be near or around the school at the time of the offense

A “public playground” is any outdoor facility, including any adjacent parking lot, and it must be

- intended for recreation
- open to the public, and
- contain 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

The prosecution does not have to prove that the defendant intended or knew that the location at which the distribution occurred was within 1,000 feet of a “playground” or “school.” The 1,000 foot zone can be measured in a straight line from the “playground” or “school,” without regard to actual pedestrian travel routes.

If the prosecution fails to prove this element beyond a reasonable doubt as to defendant McNairy for **Count 4**, then you must find him not guilty of the “proximity to a playground or school” alternative for that offense. However, you may still find him guilty of personally committing, aiding and abetting, or both personally committing and aiding and abetting the distribution of crack cocaine, as charged in **Count 4**, if the prosecution has proved the elements of those alternatives.

* * *

You do not need to determine the quantity of crack cocaine involved in any “distribution” offense, even if you find a defendant guilty of such an offense.

INSTRUCTION NO. 8 - 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

INSTRUCTION NO. 9 - EVIDENCE OF A DEFENDANT'S PRIOR CONVICTIONS

You may hear evidence that a defendant has previously been convicted of one or more drug offenses or that he engaged in similar, but uncharged drug activity.

- Consider this evidence only if you unanimously find that it is more likely true than not true; otherwise, disregard it
 - “More likely true than not true” is a lower standard than proof beyond a reasonable doubt
- If you find that you can consider such evidence, you may consider it only to help you decide the following:
 - the defendant’s intent
 - the defendant’s knowledge
 - the defendant’s motive, and
 - the defendant’s lack of mistake or accident in carrying out the acts involved in a charged offense
- Such evidence cannot be used to show that the defendant has a propensity, inclination, or tendency to commit crimes

Remember,

- As with all other evidence, the weight to give such evidence is for you to decide
- You cannot convict a person simply because he may have committed similar acts in the past

- Each defendant is on trial only for the crimes charged in this case
- You may consider the evidence of prior similar acts only for the purposes identified above

INSTRUCTION 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 following:

- the witness's intelligence
- the witness's memory
- the witness's opportunity to have seen and heard what happened
- the witness's motives for testifying
- the witness's interest in the outcome of the case
- the witness's manner while testifying
- the witness's drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- 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

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

- 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 following:

- 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

If a defendant testifies, you should judge his testimony in the same way that you judge the testimony of any other witness.

You may hear evidence that a witness has been convicted of a crime. You may use that evidence only to help you decide whether or not to believe that witness and how much weight to give that witness's testimony.

You must consider the testimony of the following witnesses with greater caution and care:

- A witness testifying pursuant to a plea agreement.
 - You may give this testimony as much weight as you think it deserves
 - Whether or not the witness's testimony has been influenced by the plea agreement is for you to decide
 - 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"
 - The court cannot reduce a sentence for "substantial assistance" unless the prosecution asks the court to do so, but if the

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

- A witness testifying about participation in a charged crime.
 - You may give this testimony as much weight as you think it deserves
 - Whether or not the witness's testimony has been influenced by the witness's desire to please the prosecutor or to strike a good bargain is for you to decide

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

INSTRUCTION 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

INSTRUCTION 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

INSTRUCTION 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.

INSTRUCTION NO. 14 - CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. 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 decide on your verdict
- 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 tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, or ask you about your participation in 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, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, YouTube, or Twitter, 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, 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 in 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 stereotypes, generalizations, gut feelings, or implicit biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases
- 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.

INSTRUCTION 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.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that a defendant is guilty, say so
- If you are convinced that the prosecution has proved beyond a reasonable doubt that a defendant is guilty, say so
- 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 opinion, if you are convinced that it is 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 whether the prosecution wins or loses the case, because the prosecution and society always win, whatever your verdict, when justice is done
- 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

INSTRUCTION NO. 16 - DUTY DURING DELIBERATIONS

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

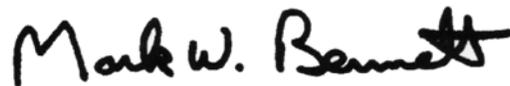
- Select a foreperson to preside over your discussions and to speak for you here in court
- Do not consider punishment in any way in deciding whether a defendant is not guilty or guilty. If a defendant is guilty, I will decide what that defendant's sentence should be
- Communicate with me by sending me a note through a Court Security Officer (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
- Base your verdict solely on the evidence, reason, your common sense, and these instructions. 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 a defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against a defendant unless you would return the same verdict without regard to that defendant's 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 7th day of February, 2011.



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.

ALLEN R. WILLIAMS and
ROBERT MCNAIRY,

Defendants.

No. CR 10-4083-MWB

VERDICT FORM

I. ALLEN R. WILLIAMS

As to defendant Allen R. Williams, we, the Jury, unanimously find as follows:

COUNT 1: THE CRACK COCAINE CONSPIRACY		VERDICT
Step 1: Verdict	On the “crack cocaine conspiracy” offense charged in Count 1 of the Indictment and explained in Instruction No. 5, please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the questions in Step 2. Instead, go on to consider your verdict on Count 2.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Quantity of Crack Cocaine	<i>If you found the defendant “guilty” of the “crack cocaine conspiracy” offense charged in Count 1 of the Indictment, please indicate the quantity of crack cocaine involved in the conspiracy for which the defendant can be held responsible. (Quantity of crack cocaine is explained in Instruction No. 6.)</i>	
	<input type="checkbox"/> 28 grams or more	
	<input type="checkbox"/> less than 28 grams	

COUNT 2: DISTRIBUTION OF CRACK COCAINE		VERDICT
On the offense of “distribution of crack cocaine” on or about March 19, 2010, as charged in Count 2 of the Indictment and explained in Instruction No. 7, please mark your verdict.		___ Not Guilty ___ Guilty
COUNT 3: DISTRIBUTION OF CRACK COCAINE		VERDICT
Step 1: Verdict	On the offense of “distribution of crack cocaine” on or about March 25, 2010, as charged in Count 3 of the Indictment and explained in Instruction No. 7, please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the questions in Step 2. Instead, go on to consider your verdict on Count 5.)</i>	___ Not Guilty ___ Guilty
Step 2: Alternative(s)	<i>If you found the defendant guilty of this offense, please indicate on which one or more of the alternatives you find him guilty.</i>	
	___ Personal commission	___ Aiding and abetting
COUNT 5: DISTRIBUTION OF CRACK COCAINE		VERDICT
On the first offense of “distribution of crack cocaine” on or about April 14, 2010, as charged in Count 5 of the Indictment and explained in Instruction No. 7, please mark your verdict.		___ Not Guilty ___ Guilty
COUNT 6: DISTRIBUTION OF CRACK COCAINE		VERDICT
On the second offense of “distribution of crack cocaine” on or about April 14, 2010, as charged in Count 6 of the Indictment and explained in Instruction No. 7, please mark your verdict.		___ Not Guilty ___ Guilty
CERTIFICATION		
By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the race, color, religious beliefs, national origin, or sex of the defendant.		

Date

Foreperson

Juror

Juror

II. ROBERT MCNAIRY

As to defendant Robert McNairy, we, the Jury, unanimously find as follows:

COUNT 1: THE CRACK COCAINE CONSPIRACY		VERDICT
Step 1: Verdict	On the “crack cocaine conspiracy” offense charged in Count 1 of the Indictment and explained in Instruction No. 5, please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the questions in Step 2. Instead, go on to consider your verdict on Count 2.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Quantity of Crack Cocaine	<i>If you found the defendant “guilty” of the “crack cocaine conspiracy” offense charged in Count 1 of the Indictment, please indicate the quantity of crack cocaine involved in the conspiracy for which the defendant can be held responsible. (Quantity of crack cocaine is explained in Instruction No. 6.)</i>	
	<input type="checkbox"/> 28 grams or more	
	<input type="checkbox"/> less than 28 grams	
COUNT 3: DISTRIBUTION OF CRACK COCAINE		VERDICT
Step 1: Verdict	On the offense of “distribution of crack cocaine” on or about March 25, 2010, as charged in Count 3 of the Indictment and explained in Instruction No. 7, please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the questions in Step 2. Instead, go on to consider your verdict on Count 5.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Alternative(s)	<i>If you found the defendant guilty of this offense, please indicate on which one or more of the alternatives you find him guilty.</i>	
	<input type="checkbox"/> Personal commission	<input type="checkbox"/> Aiding and abetting
COUNT 4: DISTRIBUTION OF CRACK COCAINE		VERDICT
Step 1: Verdict	On the offense of “distribution of crack cocaine” on or about March 25, 2010, as charged in Count 4 of the Indictment and explained in Instruction No. 7, please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the questions in Step 2. Instead, notify the Court Security Officer (CSO) that you have reached a verdict.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

Step 2: Alternative(s)	<i>If you found the defendant guilty of this offense, please indicate on which one or more of the alternatives you find him guilty.</i>	
	___ Personal commission	___ Aiding and abetting
Step 3: Proximity to a Playground or School	<i>If you found the defendant guilty of this offense, please indicate whether the distribution of crack cocaine occurred within 1,000 feet of a “playground” and/or a “school.” (You may mark one, both, or neither alternative.)</i>	
	___ Playground	
	___ School	
CERTIFICATION		
By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the race, color, religious beliefs, national origin, or sex of the defendant.		

_____ Date

_____ Foreperson

_____ Juror

Juror

Juror

Juror

Juror

