

**Jury Instructions:**

**United States of America v. Audi Pineda  
(11-167-M)**

I intend to give you a copy of these instructions for use in the jury room, so feel free to simply listen and not worry about note taking

**Introduction**

At this time, it is my duty to instruct you on the law applicable to this case. You must consider the instructions as a whole. You should not choose one part and disregard another. You must accept and apply the law as I give it to you in its entirety, and this is true whether you personally agree with the law or not. It would be a violation of the oath you took as jurors to base a decision on any version of the law other than that contained in my instructions, just as it would be a violation of that oath to return a decision upon anything but the evidence in this case. It is not up to you to decide what the law is or should be. Your duty is to apply the law as I explain it to you.

**Presumption of Innocence**

As I told you at the start of this trial, Mr. Pineda is presumed to be innocent of the accusations against him. This presumption of innocence remains with Mr. Pineda unless and until the government presents evidence satisfying you beyond a reasonable doubt that he is guilty.

The presumption of innocence is sufficient to require a not guilty verdict unless you find that such evidence has been presented.

If you find that the government has proven Mr. Pineda guilty beyond a reasonable doubt, the presumption of innocence disappears and is of no further avail to him. However, unless and until that time, the presumption remains with Mr. Pineda.

**Defendant's Constitutional Right Not to Testify**

A Defendant in a criminal trial has a constitutional right not to testify and no inference of guilt, or of anything else, may be drawn from the fact that Mr. Pineda did not testify. For you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

**The Government as a Party**

The mere fact that this case is brought in the name of the United States of America does not entitle the prosecution to any greater consideration than that accorded to Mr. Pineda. By the same token, it does not mean that the prosecution is entitled to any less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

**Proof of All Elements**

I will shortly explain the offenses with which Mr. Pineda is charged and the elements the government must prove in order to establish that Mr. Pineda is guilty of any of those three offenses.

In order for the government to prove Mr. Pineda guilty of an offense, it must convince you, beyond a reasonable doubt, that it has proved each and every element of that offense. Possibilities or even probabilities are not sufficient.

If the government fails to prove any one or more elements of an offense beyond a reasonable doubt, then you must find Mr. Pineda not guilty of that particular offense.

On the other hand, if you are convinced, beyond a reasonable doubt, that all elements of an offense with which Mr. Pineda has been charged have been proven to you beyond a reasonable doubt, then you should find him guilty of that offense.

**Reasonable Doubt**

As I have said, the burden is upon the government to prove beyond a reasonable doubt that Mr. Pineda is guilty of the charges made against him. It is a strict and heavy burden, but it does not mean that Mr. Pineda's guilt must be proven beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning Mr. Pineda's guilt.

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Reasonable doubt exists when, after weighing and considering all the evidence, using reason and common sense, jurors cannot say that they have a settled conviction of the truth of the charge. On the other hand, reasonable doubt does not exist when, after weighing and considering all the evidence, using reason and common sense, jurors can say that they have a settled conviction of the truth of the charge.

Of course, Mr. Pineda should not be convicted on suspicion or conjecture. If, for example, you view the evidence in the case as reasonably permitting either of two conclusions — one that Mr. Pineda is guilty as charged, the other that Mr. Pineda is not guilty — then you must find Mr. Pineda not guilty.

It is not sufficient for the government to establish a probability, though a strong one, that a fact charged is more likely to be true than not true. That is not enough to meet the burden of proof beyond reasonable doubt. On the other hand, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

Concluding my instructions on the burden, then, I instruct you that what the government must do to meet its heavy burden is to establish the truth of each part of each offense charged by

proof that convinces you and leaves you with no reasonable doubt, and thus satisfies you that you can, consistently with your oath as jurors, base your verdict upon it. If you so find as to a particular charge against Mr. Pineda, you will return a verdict of guilty on that charge. If, on the other hand, you think there is a reasonable doubt about whether Mr. Pineda is guilty of a particular offense, then you must give Mr. Pineda the benefit of the doubt and find Mr. Pineda not guilty of that offense.

**Consider Each Count Separately**

You must consider each count separately. The fact that you find the defendant guilty or not guilty on one count does not mean that you should find the defendant guilty or not guilty on any other count.

**Count I**

In Count I, Mr. Pineda is accused of conspiring to commit a federal crime – specifically, the crime of distributing oxycodone or possessing oxycodone with intent to distribute. It is against federal law to conspire with someone to commit this crime.

In order for you to find Mr. Pineda guilty of conspiracy, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

First, that the agreement specified in the indictment existed between at least two people to distribute or possess with intent to distribute oxycodone; and

Second, that Mr. Pineda willfully joined in that agreement.

A conspiracy is an agreement, spoken or unspoken. The conspiracy does not have to be a formal agreement or plan in which everyone involved sat down together and worked out all the details.

But the government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the crime. Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy, but you may consider such factors.

To act “willfully” means to act voluntarily and intelligently and with the specific intent that the underlying crime be committed – that is to say, with bad purpose, either to disobey or disregard the law – not to act by ignorance, accident or mistake. The government must prove two types of intent beyond a reasonable doubt before Mr. Pineda can be said to have willfully joined the conspiracy: an intent to agree and an intent, whether reasonable or not, that the underlying crime be committed. Mere presence at the scene of a crime is not alone enough, but you may consider it among other factors. Intent may be inferred from the surrounding circumstances.

Proof that Mr. Pineda willfully joined in the agreement must be based upon evidence of his own words and/or actions. You need not find that Mr. Pineda agreed specifically to or knew about all the details of the crime, or knew every other co-conspirator or that he participated in each act of the agreement or played a major role, but the government must prove beyond a reasonable doubt that he knew the essential features and general aims of the venture. Even if Mr.

Pineda was not part of the agreement at the very start, he can be found guilty of conspiracy if the government proves that he willfully joined the agreement later. On the other hand, a person who has no knowledge of a conspiracy, but simply happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

The government does not have to prove that the conspiracy succeeded or was achieved. The crime of conspiracy is complete upon the agreement to commit the underlying crime.

### **Counts II and III**

In Counts II and III, Mr. Pineda is accused of violating Section 841 of Title 21 of the United States Code. This Section provides, in relevant part:

it shall be unlawful for any person knowingly or intentionally . . . to distribute, . . .  
or possess with intent to . . . distribute. . . a controlled substance.

In Count II, Mr. Pineda is accused of possessing with intent to distribute oxycodone in Rhode Island on or about August 11, 2011.

For you to find Mr. Pineda guilty of Count II, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

First, that on the date alleged, Mr. Pineda possessed oxycodone with intent to transfer it to another person;

Second, that he knew the substance was a controlled substance; and

Third, that Mr. Pineda acted intentionally, that is, that it was his conscious object to transfer the controlled substance to another person; and

It is not necessary that Mr. Pineda benefitted in any way from the transfer of the oxycodone.

In Count III, Mr. Pineda is accused of possessing with intent to distribute cocaine in Rhode Island on or about August 11, 2011.

For you to find Mr. Pineda guilty of Count III, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

First, that on the date alleged, Mr. Pineda possessed cocaine with intent to transfer it to another person;

Second, that he knew the substance was a controlled substance; and

Third, that Mr. Pineda acted intentionally, that is, that it was his conscious object to transfer the controlled substance to another person; and

It is not necessary that Mr. Pineda benefitted in any way from the transfer of the cocaine.

### **Possession**

The term “possess” means to exercise authority, dominion or control over something. The law recognizes different kinds of possession. “Possession” includes both actual and constructive possession.

A person who has direct physical control of something on or around his or her person is then in actual possession of it. A person who is not in actual possession, but who has both the power and the intention to exercise control over something is in constructive possession of it. Whenever I use the term “possession” in these instructions, I mean actual as well as constructive possession.

**Knowingly**

The word “knowingly,” as that term is used in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

**"With Intent to Distribute"**

The phrase “with intent to distribute” means to have in mind or to plan in some way to deliver or to transfer possession or control over a thing to someone else. In this context, the phrase refers to the specific intent to actually or constructively transfer, or to attempt to transfer, the controlled substance described in the indictment.

In attempting to determine the intent of any person you may take into your consideration all the facts and circumstances shown by the evidence received in the case concerning that person.

In determining a person’s “intent to distribute” a controlled substance, you may consider, surrounding circumstances such as, the quantity of the controlled substance, the manner in which the substance is stored or kept, the presence or absence of packaging materials, scales, and large amounts of cash. The law does not require you to draw the inference of intent from this evidence, but you may do so.

**Cocaine and Oxycodone, Schedule II Controlled Substances**

I instruct you as a matter of law that both cocaine and oxycodone are Schedule II controlled substances.

**Knowledge of the Controlled Substance**

The government must prove that the offense involved a particular type of drug, and that Mr. Pineda knew that the offense involved a controlled substance. However, the government



does not have to prove that Mr. Pineda knew that he was distributing or possessing with the intent to distribute that particular drug type.

### **Method of Assessing Evidence**

Now that you know what it is that the government must prove and the standard of proof to be applied, the next question is how do you determine whether the government has proved these things beyond a reasonable doubt?

Obviously, you must make your determination solely from the evidence properly before you and from all reasonable and legitimate inferences to be drawn from that evidence.

The evidence that is properly before you consists of:

1. The testimony of the witnesses; and
2. The exhibits that I have admitted into evidence.

From that evidence, you may draw whatever conclusions are reasonable under the circumstances.

The evidence that is properly before you does not include:

1. Comments or statements by the attorneys;
2. Documents, photographs or other items which may have been referred to but have not been admitted into evidence; or
3. Anything you may have heard or seen outside of this courtroom regarding the events in question or the participants in this case.

### **Witnesses - Credibility - General Factors**

As to the testimony of witnesses, your principal task is to determine the credibility of the witnesses and the weight you will give to the testimony of each.

In making that determination, there are a number of factors that you may consider:

1. The opportunity or lack of opportunity the witness had to acquire knowledge of the facts about which the witness testified. In other words, was the witness in a position to have accurately perceived the facts that the witness related to you.
2. The reliability or unreliability of the witness's memory. In other words, did the witness have a clear recollection of what happened or was the witness's memory uncertain or unclear.
3. The witness's appearance on the stand. Did the witness appear to be a person who was telling the complete and unadulterated truth, or did it appear that the witness was slanting things one way or another either consciously or unconsciously.
4. The probability or improbability of the witness's testimony. Did what the witness had to say sound reasonable or plausible or did it appear to be highly unlikely or impossible.
5. Whether the witness had anything to gain or lose from the outcome of this case. In other words, was the witness totally impartial or did the witness have some stake in the outcome or some reason to favor one side or the other.

### **Government Agents**

The fact that a witness may be employed by a law enforcement agency does not, by itself, mean that you should give that witness's testimony any greater or any lesser weight simply because of that fact. You should assess the credibility and testimony of such a witness by applying the same factors as you would with respect to any other witness.

**Witnesses - Number - Weight of Testimony**

In evaluating the testimonial evidence, remember that you are not required to believe something to be a fact simply because a witness has stated it to be a fact and no one has contradicted what that witness said. If, in the light of all of the evidence, you believe that the witness is mistaken or has testified falsely or that he is proposing something that is inherently impossible or unworthy of belief, you may disregard that witness's testimony even in the absence of any contradictory evidence.

Just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the greater number of witnesses. Once again, it is the credibility or quality of the testimony that determines where the weight of the evidence lies.

**Exhibits**

In addition to assessing the credibility of the witnesses and the weight to be given to their testimony, you should also evaluate the exhibits which you will have with you in the jury room. Examine them and consider them carefully.

However, bear in mind that merely because an exhibit has been admitted into evidence does not mean that you are required to accept it at face value. Like the testimony of a witness, the significance of an exhibit or the weight you attach to it will depend upon your evaluation of that exhibit in light of all the facts and circumstances of the case.

### **Direct and Circumstantial Evidence**

As I mentioned previously, you may consider only the evidence that is properly before you. However, that does not mean that, in determining the facts, you are limited to the statements of the witnesses or the contents of the exhibits.

In reaching your conclusions, you are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in the light of your experience. Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in the case.

Such evidence is sometimes called circumstantial evidence. To put it another way, a fact may be proved either by direct evidence or by circumstantial evidence. Direct evidence includes such things as the testimony of an eyewitness who personally observed the fact in question or a photograph or document showing the actual thing described.

Circumstantial evidence consists of proof of a series of facts or circumstances from which the existence or nonexistence of another fact may be reasonably inferred. (Example: rain on the pavement.)

The law makes no distinction between the weight to be given to direct and circumstantial evidence. It is for you to decide how much weight to give any evidence. However, it does require that any fact required to convict a defendant be proven beyond a reasonable doubt.

### **Conduct of Court - General**

As I have said before, it is up to you to determine the facts in this case. You should not interpret anything I have said or done during this trial as expressing an opinion on my part as to what the facts in this case are. I have not intended to express any such opinion and you should

not be concerned about what my opinions might be regarding the facts. That is a matter for you to decide.

### **Objections by Counsel**

During this trial there have been occasions when the attorneys have objected to a question that was asked of a witness. You should not penalize an attorney, or more importantly, his client, for objecting. It is the attorney's right and duty to protect the client's interests by objecting to what the attorney may believe is evidence that does not satisfy the requirements of the rules of evidence.

If I sustained the objection, it is important that you not speculate about what the answer to the objected-to question might have been. By sustaining the objection, the Court has determined that the evidence should not be considered by you.

### **Bias and Prejudice**

Neither bias in favor of any person or cause, prejudice against any person or cause, nor sympathy of any kind should be permitted to influence you in the course of your deliberations.

All that any party here is entitled to, or, for that matter expects, is a verdict based upon your fair, scrupulous and conscientious examination of the evidence before you and your application of the law as I have explained it to you.

### **Verdict - Unanimity Required**

In order to return a verdict in this case, all twelve of you must agree as to what that verdict will be. You cannot return a verdict of either guilty or not guilty with respect to any charge against Mr. Pineda unless your decision is unanimous.

Therefore there are two things that you should keep in mind during the course of your deliberations.

On the one hand, you should listen carefully as to what your fellow jurors have to say and should be open minded enough to change your opinion if you become convinced that it was incorrect.

On the other hand, you must recognize that each of you has an individual responsibility to vote for the verdict that you believe is the correct one based on the evidence that has been presented and the law as I have explained it. Accordingly, you should have the courage to stick to your opinion even though some or all of the other jurors may disagree as long as you have listened to their views with an open mind.

**Foreperson and Duty to Deliberate**

Juror # will be the foreperson. She/He will preside over the deliberations and speak for you here in court.

You will discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous, meaning all of you must agree. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion during the course of the deliberations if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

**Communications with the Court**

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by the foreperson. No member of the jury should ever attempt to contact me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

**Return of Verdict**

A verdict form has been prepared for you by the Court. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign it and date it, and advise the Court that you are ready to return to the courtroom.

**Copy of Instructions**

I have instructed you on the law that governs your deliberations. I will send into the jury room a written copy of my instructions.