

Jury Instructions

United States of America v. Cristian Jimenez

(Cr. 12-077S)

Introduction

At this time, it is my duty to instruct you on the law applicable to this case. You must accept the rules of law that I give you and apply them to the facts in this case as you find those facts to be.

In applying the law that I am about to explain to you in these instructions, 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.

You must accept and apply the rules of law that I give to you whether you agree with them 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.

You should not worry about memorizing or writing down all of the instructions as I state them, because I will send into

the jury room a written copy of my instructions. However, you must know that the law is as I will give it to you from the bench; the written copy is merely a guide to assist you.

Presumption of Innocence

As I told you at the start of this trial, the Defendant is presumed to be innocent of the accusations against him. This presumption of innocence remains with the Defendant unless and until the government presents evidence satisfying you beyond a reasonable doubt that the Defendant 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 the Defendant guilty beyond a reasonable doubt, the presumption of innocence disappears and is of no further avail to him. However, until that time, the presumption remains with the Defendant.

Reasonable Doubt

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

Of course, a defendant is never to 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 the Defendant is guilty of an offense as charged, the other that the Defendant is not guilty of that offense - you will find the Defendant not guilty of that offense.

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 the offenses 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 the charges against the Defendant, you will return a verdict of guilty on those charges. If, on the other hand, you think there is a reasonable doubt about whether the Defendant is guilty of the offenses, you must give the Defendant the benefit of the doubt and find him not guilty of those offenses.

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 the Defendant did not testify. For any of you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

Proof of All Elements

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

In order for the government to prove the Defendant 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 the offense beyond a reasonable doubt, you must find the Defendant 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 the Defendant has been charged have been proved, then you should find the Defendant guilty of that offense.

Bear in mind that the requirement that the government prove every element of the offenses with which the Defendant is charged does not mean that the government is required to prove every statement contained in the Indictment.

What it means is that the government must prove facts sufficient to prove all of the elements of the offenses with which the Defendant is charged, as I have explained them.

Indictment - Effect

You will have the Indictment with you in the jury room to help you remember the precise nature of the charges against the Defendant. You are not to speculate about why any other person mentioned during the trial or whose name appears in the Indictment as a defendant is not currently on trial before you. The fact that they are listed in the same Indictment as the Defendant is not evidence of an association between these people and the Defendant, nor is it evidence of the Defendant's guilt. The same is true for the other counts to which the Defendant is not charged.

I remind you, once again, that an indictment is nothing more than an accusation. It should not be considered as evidence of guilt. It may not even be the basis of an inference of guilt. All that it does is to bring this matter before you for determination. Beyond that, it has no significance, whatever. It merely sets forth the elements of the offenses which the government must prove beyond a reasonable doubt.

Definition of "On or About"

You will note the Indictment charges that the offenses were committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged.

Multiple Counts - One Defendant

A separate crime is alleged against the Defendant in each count of the Indictment that names him, specifically Counts I, II, IV, V, and VI. Each alleged offense, and any evidence pertaining to it, must be considered separately by the jury. You must give separate and individual consideration to each charge against the Defendant.

Summary of the Charges

As I told you at the beginning of trial, the Indictment in this case charges the Defendant with the following: one count of conspiracy to distribute or to possess with the intent to distribute heroin, a controlled substance; three counts of distribution of heroin or possession of heroin with the intent to distribute it; and one count of possession of a firearm in furtherance of drug trafficking. I am now going to instruct you as to the specific elements which the government must prove in order to prove the Defendant guilty.

Count I

(Conspiracy to Distribute and to Possess with the Intent to Distribute Heroin)

The Defendant, CRISTIAN JIMENEZ, is accused of conspiring with others known and unknown to the Grand Jury to distribute and possess with the intent to distribute one kilogram or more of heroin. It is against federal law to conspire with someone to commit this crime.

For you to find the Defendant guilty of conspiracy, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that the conspiracy charged in the Indictment existed between at least two people to distribute and possess with intent to distribute controlled substances; and

Second, that the Defendant willfully joined in that agreement.

If you find the Defendant guilty of conspiracy, then you will have to answer two additional questions:

First, did the overall scope of the conspiracy involve at least one kilogram of heroin?

Second, how much heroin was reasonably foreseeable to the Defendant?

Controlled Substance

You are instructed as a matter of law that heroin qualifies as a "controlled substance."

Conspiracy - Definition

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.

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.

It is important to remember that conspiracy is a separate offense from the substantive crime that may be the goal of the conspiracy. The gist of the offense of conspiracy is an agreement to commit the underlying crime.

Conspiracy - Intent

The government must prove two types of intent beyond a reasonable doubt before the Defendant can be said to have willfully joined the conspiracy:

1. An intent to agree; and
2. 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.

Role in the Conspiracy

In order to convict the Defendant of the charged conspiracy, you must find that he willfully joined in the agreement. Proof of that must be based upon evidence of the Defendant's own words or actions. You need not find that the Defendant agreed specifically to or knew about all the details of the crime, or that he knew every other co-conspirator.

Further, the government need not prove that the Defendant participated in each act of the agreement or played a major role. One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. The Defendant may be convicted as a conspirator even though he may have played only a minor part.

Evidence establishing beyond a reasonable doubt a connection of the Defendant with the conspiracy, even though that connection is slight, is sufficient to convict the Defendant of knowing participation in that conspiracy.

Willfully

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.

Proof that the Defendant willfully joined in the agreement must be based upon evidence of his own words and/or actions. You need not find that the Defendant 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 the Defendant 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.

Counts II, IV, & V

(Distribution or Possession with the Intent to Distribute Heroin)

In Count II of the Indictment, Defendant CRISTIAN JIMENEZ is accused of knowingly and intentionally distributing or possessing with the intent to distribute heroin on or about April 23, 2012, or aiding and abetting in that offense.

In Count IV of the Indictment, Defendant CRISTIAN JIMENEZ is accused of knowingly and intentionally distributing or possessing with the intent to distribute heroin on or about April 27, 2012, or aiding and abetting in that offense.

In Count V of the Indictment, Defendant CRISTIAN JIMENEZ is accused of knowingly and intentionally distributing or possessing with the intent to distribute heroin on or about May 4, 2012, or aiding and abetting in that offense.

It is against federal law to have heroin in your possession with the intention of distributing it to someone else, or to aid and abet someone else in possessing heroin with the intent to distribute it. For you to find the Defendant guilty of the above-described crimes, you must be convinced that the government has proven each of these things beyond a reasonable doubt:

First, that the Defendant on that date possessed heroin, either actually or constructively;

Second, that the Defendant did so with a specific intent to distribute the controlled substance over which he had actual or constructive possession;

Third, that he did so knowingly and intentionally.

It is not necessary for you to be convinced that the Defendant actually delivered the controlled substance to someone else, or that he made any money out of the transaction. It is enough for the government to prove, beyond a reasonable doubt, either:

1. That the Defendant transferred what he knew was a controlled substance to another person; or
2. That the Defendant had in his possession what he knew was a controlled substance and that he intended to transfer it or some of it to someone else.

A person's intent may be inferred from the surrounding circumstances. Intent to distribute may, for example, be inferred from a quantity of drugs larger than that needed for personal use. In other words, if you find that the Defendant possessed a quantity of heroin - more than that which would be needed for personal use - then you may infer that the Defendant intended to distribute that controlled substance. The law does not require you to draw such an inference, but you may draw it.

Knowingly

Throughout these instructions, you have heard (and will continue to hear) me use the term "knowingly" in reference to the crimes charged in the Indictment. The term "knowingly" means that the act was done voluntarily and intentionally, and not because of mistake or by accident.

Possession

Throughout these instructions, you have heard (and will continue to hear) me use the terms "possession" and "possess" in reference to the crimes charged in the Indictment.

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.

Possession also includes both sole and joint possession. If one person alone has actual or constructive possession, possession is sole. If two or more persons share actual or constructive possession, possession is joint. Whenever I have used the word "possession" in these instructions, I mean joint as well as sole possession.

Distribute

The term "distribute" means to deliver a controlled substance to the possession of another person, which in turn means the actual, constructive, or attempted transfer of a controlled substance.

Knowledge of the Controlled Substance

The government must prove that the offense involved a particular type and quantity of drug, not that the Defendant knew that he was distributing or possessing with the intent to distribute the particular drug type and quantity charged.

Count VI

(Using or Carrying a Firearm During and in Relation to, or Possessing a Firearm in Furtherance of, Drug Trafficking or Crime of Violence, 18 U.S.C. § 924(c))

In Count VI of the Indictment, Defendant CRISTIAN JIMENEZ is accused of using or carrying a firearm during and in relation to, or possessing a firearm in furtherance of, the drug trafficking crime alleged in Count V of the Indictment, that is, the distribution of heroin on May 4, 2012, or aiding and abetting another person in the commission of this offense.

It is against federal law to use or carry a firearm during and in relation to a drug trafficking crime or to possess a firearm in furtherance of a drug trafficking crime.

For you to find the Defendant guilty of this crime, you must be satisfied that the government has proven each of the following things:

First, that the Defendant committed the drug trafficking crime alleged; and

Second, that the Defendant knowingly used or carried a firearm during and in relation to that crime, or possessed a firearm in furtherance of the commission of that crime.

Firearm

The term "firearm" means any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive. The term "firearm" also includes the frame or receiver of any such weapon. The gun does not have to be operational or loaded to qualify as a firearm.

Use and Carry

To "use" a firearm means to employ the firearm actively, such as to brandish, display, strike with, discharge, or attempt to discharge it, or even to refer to it in a way calculated to affect the underlying crime.

To "carry" a firearm means to move or transport the firearm on one's person or in a vehicle or container. It need not be immediately accessible.

During and in Relation to

For either use or carry to be "during and in relation to" a crime, the firearm must have played a role in the crime or must have been intended by the Defendant to play a role in the crime. That need not have been its only purpose, however.

In Furtherance of

The Defendant possessed a firearm "in furtherance of" a crime if the firearm possession made the commission of the underlying crime easier, safer, or faster, or in any other way helped the Defendant commit the crime. There must be some connection between the firearm and the underlying crime, but the firearm need not have been actively used during the crime. For example, possession of a firearm to protect drugs or sales proceeds can establish such a nexus.

The government does not need to prove that the Defendant specifically intended to use or did use a firearm in the course of the drug transaction in order for you to convict him. The government needs only to prove the Defendant's general intent, e.g., that the Defendant knew that he carried a firearm during the course of the drug offense conduct.

Moreover, if a gun is possessed for some other, perhaps legitimate, purpose, an intent to have it available for possible use in connection with, say, a drug deal, or as a device to lend courage during such a transaction, will suffice to invoke the statute.

Factors that you may consider to determine whether a firearm was possessed in furtherance of a drug trafficking crime include, but are not limited to, whether the firearm is in plain

view and accessible to the Defendant, whether it was loaded, and its proximity to drugs or to drug trafficking proceeds.

Aid and Abet

Throughout these instructions, you have heard me use the term "aid and abet" in reference to the crimes charged in the Indictment. To "aid and abet" means intentionally to help someone else commit a crime. To establish aiding and abetting, the government must prove beyond a reasonable doubt:

First, that someone else committed the charged crime; and

Second, that the Defendant consciously shared the other person's knowledge of the underlying criminal act, intended to help him, and willfully took part in the endeavor, seeking to make it succeed.

The Defendant need not perform the underlying criminal act, be present when it is performed, or be aware of the details of its execution to be guilty of aiding and abetting. But a general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of a crime and knowledge that a crime is being committed are also not sufficient to establish aiding and abetting.

With respect to the Counts involving possession of a firearm in furtherance of a drug trafficking crime, the shared knowledge requirement requires that the Defendant have a

"practical certainty" the firearm will be used, carried, or possessed.

Mere Presence

As I have stated previously, mere presence at the scene of a crime or merely knowing that a crime is being committed or is about to be committed is not sufficient conduct to find that a Defendant committed that crime.

However, the law recognizes a difference between mere presence and culpable presence in the context of drug trafficking activities. While mere presence is not sufficient to base criminal charges, a Defendant's presence at the point of a drug sale, taken in the light of attendant circumstances, can constitute strong evidence of complicity.

Thus, you must evaluate the circumstances of this case in order to determine the quality of the Defendant's presence at a location where drugs are sold. This will assist you in determining whether the Defendant was merely present or culpably present.

Pinkerton Charge

There is another method by which you may evaluate whether to find the Defendant guilty of the above-described substantive charges in the Indictment.

If, in light of my instructions, you find beyond a reasonable doubt that Defendant CRISTIAN JIMENEZ is guilty of the conspiracy count (Count I), then with respect to the substantive crimes charged in Counts II, IV, V, and VI, you may also, but you are not required to, find the Defendant guilty, provided you find beyond a reasonable doubt each of the following elements:

First, that someone committed the substantive crime charged in the Count;

Second, that the person you find actually committed the substantive crime was a member of the conspiracy of which you found the Defendant was a member;

Third, that this co-conspirator committed the substantive crime in furtherance of the conspiracy;

Fourth, that the Defendant was a member of this conspiracy at the time the substantive crime was committed and had not withdrawn from it; and

Fifth, that the Defendant could reasonably have foreseen that one or more of his co-conspirators might commit the substantive crime.

If you find all five of these elements to exist beyond a reasonable doubt, then you may find the Defendant guilty of the substantive crime charged, even though he did not personally participate in the acts constituting the crime or did not have actual knowledge of them.

If, however, you are not satisfied as to the existence of any one of these five elements, then you may not find the Defendant guilty of the particular substantive crime, unless the government proves beyond a reasonable doubt that the Defendant personally committed that substantive crime, or aided and abetted its commission.

Under this theory of liability, the Defendant need not have carried the firearm himself to be liable under 18 U.S.C. § 924(c), so long as there is sufficient evidence that a co-conspirator carried or used a firearm in furtherance of the conspiracy and that this was reasonably foreseeable to the Defendant.

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 proven 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. Answers given by witnesses which I ordered stricken and instructed you to disregard;
3. Documents, photographs, or other items which may have been referred to but have not been admitted into evidence. Since they are not proper evidence, you should not speculate or guess as to what they might say or show and you may not consider them except to the extent that, and for the purpose that, they may

have been read or shown to you during the course of the trial; and

4. Anything you may have heard or seen outside of this courtroom regarding the events in question or the participants in this case.

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 proven, 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 proven 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.

The law makes no distinction between the weight to be given to direct and circumstantial evidence. However, it does require

that any fact required to convict the Defendant be proven beyond a reasonable doubt.

Use of Transcripts and Recordings as Evidence

During this trial, recordings of intercepted telephone conversations have been introduced as evidence. These conversations were legally recorded; they are a proper form of evidence and may be considered by you as you would any other evidence.

Because the recorded conversations took place in the Spanish language, English transcripts of those conversations have also been introduced as evidence. The transcripts were provided to you so that you could consider the content of the conversations on the recordings.

With respect to the Spanish recordings, you should not rely in any way on any knowledge you may have of the Spanish language spoken on the recording.

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 or she 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.

You should also bear in mind that it is not the number of witnesses testifying on either side of a particular issue that determines where the weight of the evidence lies. Rather, it is the quality of the witnesses' testimony that counts.

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 have 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.

Witnesses - Credibility - 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.

Expert Witnesses

During this trial, you have heard testimony from at least one witness who claims to have specialized knowledge in a technical field. Such persons are sometimes referred to as expert witnesses. Because of their specialized knowledge, they are permitted to express opinions which may be helpful to you in determining the facts.

Since they do have specialized knowledge, the opinions of expert witnesses, whether expressed personally or in documents which have been admitted into evidence, should not be disregarded lightly.

On the other hand, you are not required to accept such opinions just because the witnesses have specialized knowledge.

In determining what weight to give to the testimony of a so-called expert witness, you should apply the same tests of credibility that apply to the testimony of any other witness. That is to say, you should consider such things as the witness's:

- opportunity to have observed the facts about which he testified; and
- apparent candor or lack of candor.

In addition, you should take into account the witness's:

- qualifications; and

-- the accuracy of the facts upon which the witness's opinions were based.

In short, you should carefully consider the opinions of expert witnesses, but they are not necessarily conclusive.

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 the Defendant. 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.

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 or her client, for objecting. It is the attorney's right and duty to protect a 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.

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.

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 against the Defendant 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.

Selection of Foreperson and Duty to Deliberate

When you begin your deliberations, you should elect one member of the jury as your foreperson. The foreperson will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous. 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.

Jury Recollection Controls - Rehearing Testimony

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

Occasionally, juries want to rehear testimony. If you feel that you need to rehear testimony, I will consider your request. However keep in mind that this is a time-consuming and difficult process, so if you think you need this, consider your request carefully and be as specific as possible.

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 and date it, and advise the Court that you are ready to return to the courtroom.