

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

|                          |   |                 |
|--------------------------|---|-----------------|
| _____                    | ) |                 |
| UNITED STATES OF AMERICA | ) |                 |
|                          | ) |                 |
| vs.                      | ) | CR No. 14-108-M |
|                          | ) |                 |
| JOSE GORIS,              | ) |                 |
| Defendant.               | ) |                 |
| _____                    | ) |                 |

**JURY INSTRUCTIONS**

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, Proof Beyond a Reasonable Doubt**

It is a cardinal principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until his or her guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the most important substance.

The presumption of innocence alone may be sufficient to raise a reasonable doubt and to require the acquittal of a defendant. The defendant before you, Jose Goris, has the benefit of that presumption throughout the trial, and you are not to convict him of a particular charge unless you are persuaded of his guilt of that charge beyond a reasonable doubt.

The presumption of innocence until proven guilty means that the burden of proof is always on the government to satisfy you that Mr. Goris is guilty of the crime with which he is charged beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to Mr. Goris. It is always the government's burden to prove each of the elements of the crime charged beyond a reasonable doubt by the evidence and the reasonable inferences to be drawn from that evidence. Mr. Goris has the right to rely upon the failure or inability of the government to establish beyond a reasonable doubt any essential element of a crime charged against him.

If, after fair and impartial consideration of all the evidence, you have a reasonable doubt as to the Defendant's guilt of a particular crime, it is your duty to acquit him of that crime. On the other hand, if, after fair and impartial consideration of all the evidence, you are satisfied beyond a reasonable doubt of Mr. Goris's guilt of a particular crime, you should vote to convict him.

**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. Goris 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. Goris. 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 offense with which Mr. Goris is charged and the elements the government must prove in order to establish that Mr. Goris is guilty of that offense.

In order for the government to prove Mr. Goris 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, then you must find Mr. Goris not guilty of the offense.

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

**The Charge**

Mr. Goris is charged with one count of attempting to possess with the intent to distribute 500 grams or more of cocaine in violation of title 21, sections 841(a)(1), 841 (b)(1)(B), and 846 of the United States Code. It is against federal law to attempt to possess with the intent to distribute, (that is, to transfer), cocaine to another person.

Mr. Goris is accused of attempting to possess 500 grams or more of cocaine on or about August 14, 2014 with the intent to distribute it to someone else. It is against federal law to have cocaine in your possession with the intention of distributing it to someone else.

For you to find Mr. Goris guilty of this crime, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that on August 14, 2014, Mr. Goris attempted to possess 500 grams or more of cocaine;

Second, that Mr. Goris did so knowingly and intentionally; and

Third, that he did so with a specific intent to distribute the cocaine over which he had actual or constructive possession.

It is not necessary for you to be convinced that Mr. Goris actually delivered the cocaine 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, that he attempted to possess what he believed was cocaine and that he intended to transfer it or some of it to someone else.

I will now instruct you on the definitions of some of the terms contained in the elements I just set forth.

**“Attempt”**

In order to carry its burden of proof for the crime of attempt to possess cocaine with intent to distribute as charged the indictment, the government must prove the following two things beyond a reasonable doubt:

First, that Mr. Goris intended to possess 500 grams or more of cocaine with the intention of distributing it to someone else; and

Second, that Mr. Goris took a substantial step toward the commission of that crime.

Mere intention to commit a specific crime does not amount to an attempt. In order to convict the Defendant of an attempt, you must find beyond a reasonable doubt that the Defendant intended to commit the crime charged, and that he took some action which was a substantial step toward the commission of the crime, it is necessary to distinguish between mere preparation on the one hand, and the actual doing of the criminal deed on the other.

A substantial step is less than what is necessary to complete the substantive crime but more than mere preparation. In order to constitute a substantial step leading to attempt liability, a defendant's behavior must be of such a nature that a reasonable observer, viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute.

Mere preparation, which may consist of planning the offense, or of devising, obtaining or arranging a means for its commission, is not an attempt, although some preparations may amount to an attempt. The acts of a person who intends to commit a crime will constitute an attempt when the acts themselves clearly indicate an intent to commit the crime, and the acts are a substantial step in a course of conduct planned to culminate in the commission of the crime.

Impossibility is not a defense to the crime of attempt. That is, the fact that the cocaine was not real is not a defense to the offense of an attempt to possess with intent to distribute 500 grams or more of cocaine, if all the other elements of the offense are established beyond a reasonable doubt.

**“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 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 alleged 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, among other things, the quantity of the controlled substance, the presence or absence of packaging materials, scales, cutting agents, 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, a Schedule II Controlled Substance**

I instruct you as a matter of law that cocaine is a Schedule II controlled substance. Whenever I refer to cocaine in these instructions, I am referring to a mixture and substance containing a detectable amount of cocaine.

**Knowledge of the Controlled Substance**

The government must prove that the offense involved a particular type and quantity of drug, and that Mr. Goris knew, believed, or intended that the offense involved 500 grams or more of cocaine. However, the government does not have to prove that Mr. Goris knew, believed, or intended that he was distributing or attempting to possess with the intent to distribute that particular drug type or that particular quantity. However, the government must prove

beyond a reasonable doubt that Mr. Goris knew, believed, or intended that the offense involved 500 grams or more of cocaine. The fact that Mr. Goris may have been mistaken about the nature of the substance (i.e. whether the cocaine was real or not) is not a defense.

**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.



### **Recordings & Transcripts**

During this trial, you have heard a number of recorded conversations. These conversations may be considered by you, like any other evidence.

When you listened to those recordings, the Government was permitted to furnish you with transcripts it prepared of those conversations as an aid to assist you.

I remind you, again, that it is the recording itself and not the transcripts that constitute evidence of what was said. Therefore, if what you heard on the recording is in any way different from what appeared on the transcripts, what you heard on the tapes is controlling.

There is one exception to this instruction in this case: there are four recordings in Spanish. The transcripts of these conversations are full exhibits and may be considered by you like any other exhibit.

Some of the recordings included both English and Spanish languages. Keeping in mind that what you heard on the tapes is evidence, to the extent that you need to review that evidence, you can request to listen to it again in the courtroom, using the translated transcript.

### **Witnesses**

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

As to the testimony of witnesses, it is your task 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.

**Impeachment – Inconsistent Statement or Conduct**

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something that is inconsistent with the witness' present testimony. If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves. If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness' other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves. An act or omission is "knowingly" done, if voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

**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.

**Undercover Agent**

You have heard testimony that a Task Force Officer of the Drug Enforcement Administration worked undercover during this investigation. There is nothing illegal or improper with the government employing this technique. Whether or not you approve the use of an undercover agent to detect criminal acts is not to enter into your deliberation in any way. If you are satisfied beyond a reasonable doubt that Mr. Goris committed the offense charged in the indictment, the circumstance that the government made use of an undercover agent is irrelevant to your determination.

**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.

### **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 that 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. However, it does require that any fact required to convict a defendant be proved 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 the charge against Mr. Goris 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.