**United States of America v. Willy D. Espinal**
**(CR 17-00032)**

## 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.

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 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 and II. 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 possess with the intent to distribute cocaine, a controlled substance; and
- One count of possession of cocaine with the intent to distribute it.

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 Possess with Intent to Distribute Cocaine)**

In Count I of the Indictment, Defendant WILLY ESPINAL is accused of conspiring with another person, Laura G. Martinez, to possess with the intent to distribute 500 grams or more of cocaine, which is a controlled substance. 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 agreement specified in the Indictment, and not some other agreement or agreements, existed between WILLY ESPINAL and LAURA G. MARTINEZ to possess with intent to distribute a controlled substance;

Second, that the Defendant willfully joined in that agreement.

If you find the Defendant guilty of this conspiracy charge, you will also have to answer the following question:

Did the Government prove beyond a reasonable doubt that the conspiracy of which the Defendant was a member involved at least 500 grams of cocaine?

**Controlled Substance**

You are instructed as a matter of law that cocaine 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.

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 violate or to disregard the law.

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.

**Role in the Conspiracy**

To find the Defendant guilty of the charged conspiracy, you must find that he willfully joined in the agreement. Proof that the Defendant willfully joined in the agreement 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 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. One may also be convicted as a conspirator even though one may have played only a minor part. Nevertheless, the Government must prove beyond a reasonable doubt that the Defendant knew the essential features and general aims of the venture.

**Conspiracy - Willful Intent**

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 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.

Intent may be inferred from the surrounding circumstances. Mere presence at the scene of a crime is not alone enough, but you may consider it among other factors.

**Count II**
**(Possession with Intent to Distribute Cocaine)**

In Count II of the Indictment, Defendant WILLY ESPINAL is accused of possessing 500 grams or more of cocaine on or about February 21, 2017, intending 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, or to aid and abet someone else in possessing cocaine with the intent to distribute it.

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

First, that the Defendant on that date knowingly and intentionally possessed cocaine, either actually or constructively;

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

If you find the Defendant guilty of this charge, you will also have to decide whether the Government proved beyond a reasonable doubt that the Defendant possessed with intent to distribute at least 500 grams of cocaine.

**Possess with Intent to Distribute**

It is not necessary for you to be convinced that the Defendant 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 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.

**Possession**

Throughout these instructions, you will hear me use the terms "possession" and "possess" in reference to the crime charged in the indictment.

The term "possess" means to knowingly 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.

**Knowingly**

Throughout these instructions, you will 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.

**Aid and Abet**

You have heard me use the term "aid and abet" in these instructions. 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 that person, and that the Defendant 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. Again, 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.

**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 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 the defendant committed that crime, a Defendant's presence at the point where drugs were found, taken in the light of attendant circumstances, can constitute 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 found. This will assist you in determining whether the Defendant was merely present or culpably present.

**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.

Our system of justice depends on judges like me and jurors like you being able and willing to make careful and fair decisions. Scientific studies of the way our brains work have shown that, for all of us, our first responses are often like reflexes. Just like our knee reflexes, our mental responses are quick and automatic. Even though these quick responses may not be what we consciously think, they could influence how we judge people or even how we remember or evaluate the evidence. Studies have also taught us some ways to be more careful in our thinking that I ask you to use as you consider the evidence in this case.

Take the time you need to test what might be reflexive unconscious responses and to reflect carefully and consciously about the evidence.

Focus on individual facts, don't jump to conclusions that may have been influenced by unintended stereotypes or associations.

Try taking another perspective. Ask yourself if your opinion of the parties or witnesses or of the case would be different if the people participating looked different or if they belonged to a different group.

You must each reach your own conclusions about this case individually, but you should do so only after listening to and considering the opinions of the other jurors, who may have different backgrounds and perspectives from yours.

Working together will help achieve a fair result.

**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 Translations as Evidence**

During this trial, documents consisting of translated text messages have been introduced as evidence. These messages were legally obtained; they are a proper form of evidence and may be considered by you as you would any other evidence.

**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**

One of the things jurors must do is assess whether courtroom testimony is credible and this is a difficult task. For one thing, some time has passed between the events at issue and this trial. For another, witnesses' testimony is given in response to lawyers' questions, subject to our evidence rules, which is different from the conversations you might have with others in your daily life.

In considering the testimony, there are a number of factors you may consider, including:

- what the witness said and how he or she said it;
- what motives, biases, or interests the witness may have in giving this testimony;
- 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;
- whether the witness hopes for, expects, or received any benefit for giving this testimony or was under any pressure to give this testimony;

- whether testimony makes sense from the witness's perspective and after looking at all of the evidence in the case; and
- whether the witness's testimony is supported or contradicted by independent evidence

If the witness has made a prior statement about the facts in this case, consider what the witness said and whether the statement was recorded at the time; the circumstances of that statement; what information the witness may have been exposed to before making that statement; and what happened between that statement and the trial testimony.

Once you have decided whether a witness is accurate and believable, you may give his or her testimony whatever weight you think appropriate. You may believe everything a witness says, or only part of it, or none of it.

**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. You are not required, however, 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;
- the soundness of the reasons given for any opinions;
- the accuracy of the facts upon which the witness's opinions were based; and

- all the other evidence in the case

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.

**Use of An Interpreter**

In this case the Defendant has used the services of a Court interpreter. You are not to draw any adverse inference from his use of this service, or the fact that his English language abilities may necessitate this assistance.

**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**

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.