IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA	*	
	*	
v.	*	**CR. NO. GLR-23-026**
	*	
RYAN E. DALES,	*	
	*	
Defendant.	*	

****

JURY INSTRUCTIONS

The United States of America, by its undersigned counsel, requests that the Court instruct the jury in this case using the following proposed instructions, which incorporate the Court's standard form jury instructions that were previously provided by Chambers.

Any requested, additional language or instructions not included in the Court's standard form instructions are standard instructions from L. Sand, J. Siffert, W. Loughlin & S. Reiss, Modern Federal Jury Instructions: Criminal. Any language or instructions that the Government proposes to delete from the standard form instructions or from the Sand instructions are ~~stricken in red~~ for the Court's consideration. Any additions, including to additional proposed instructions, are highlighted.[1]

The Government reserves the right to request further instructions should an issue arise during the trial that may necessitate such additional instructions. The Government further requests that the Court, in accordance with Rule 30 of the Federal Rules of Criminal Procedure, inform counsel of its proposed action upon the requested instructions prior to counsels' arguments to the jury.

[1] The headers of all proposed additional instructions are also highlighted.

Respectfully submitted,

Erek L. Barron
United States Attorney

/s/
Paul A. Riley
Assistant United States Attorney

TABLE OF CONTENTS

JURY INSTRUCTION NO. 1. 6
JURY INSTRUCTION NO. 2. 7
JURY INSTRUCTION NO. 3. 8
JURY INSTRUCTION NO. 4. 9
JURY INSTRUCTION NO. 5. 10
JURY INSTRUCTION NO. 6. 11
JURY INSTRUCTION NO. 7. 12
JURY INSTRUCTION NO. 8. 13
JURY INSTRUCTION NO. 9. 14
JURY INSTRUCTION NO. 10. 15
JURY INSTRUCTION NO. 11. 16
JURY INSTRUCTION NO. 12. 17
JURY INSTRUCTION NO. 13. 18
JURY INSTRUCTION NO. 14. 20
JURY INSTRUCTION NO. 15. 21
JURY INSTRUCTION NO. 16. 22
JURY INSTRUCTION NO. 17. 23
JURY INSTRUCTION NO. 18. 24
JURY INSTRUCTION NO. 19. 25
JURY INSTRUCTION NO. 20. 26
JURY INSTRUCTION NO. 21. 27
JURY INSTRUCTION NO. 22. 28
JURY INSTRUCTION NO. 23. 29
JURY INSTRUCTION NO. 24. 31
JURY INSTRUCTION NO. 25. 32
JURY INSTRUCTION NO. 26. 33
JURY INSTRUCTION NO. 27. 34
JURY INSTRUCTION NO. 28. 35
JURY INSTRUCTION NO. 29. 36
JURY INSTRUCTION NO. 30. 37
JURY INSTRUCTION NO. 31. 38
JURY INSTRUCTION NO. 32. 39
JURY INSTRUCTION NO. 33. 40

JURY INSTRUCTION NO. 34. 41
JURY INSTRUCTION NO. 35. 42
JURY INSTRUCTION NO. 36. 43
JURY INSTRUCTION NO. 37. 44
JURY INSTRUCTION NO. 38. 45
JURY INSTRUCTION NO. 39. 46
JURY INSTRUCTION NO. 40. 47
JURY INSTRUCTION NO. 41. 48
JURY INSTRUCTION NO. 42. 49
JURY INSTRUCTION NO. 43. 50
JURY INSTRUCTION NO. 44. 52
JURY INSTRUCTION NO. 45. 53
JURY INSTRUCTION NO. 46. 54
JURY INSTRUCTION NO. 47. 55
JURY INSTRUCTION NO. 48. 56
JURY INSTRUCTION NO. 49. 57
JURY INSTRUCTION NO. 50. 59
JURY INSTRUCTION NO. 51. 60
JURY INSTRUCTION NO. 52. 61
JURY INSTRUCTION NO. 53. 62
JURY INSTRUCTION NO. 54. 63
JURY INSTRUCTION NO. 55. 64
JURY INSTRUCTION NO. 56. 65
JURY INSTRUCTION NO. 57. 66
JURY INSTRUCTION NO. 58. 67
JURY INSTRUCTION NO. 59. 68
JURY INSTRUCTION NO. 60. 69
JURY INSTRUCTION NO. 61. 70
JURY INSTRUCTION NO. 62. 72
JURY INSTRUCTION NO. 63. 73
JURY INSTRUCTION NO. 64. 74
JURY INSTRUCTION NO. 65. 75
JURY INSTRUCTION NO. 66. 76
JURY INSTRUCTION NO. 67. 77

JURY INSTRUCTION NO. 68. 78

JURY INSTRUCTION NO. 1.

(Introduction)

Members of the Jury:

Now that you have heard all the evidence, it is my duty to instruct you on the law applicable to this case.

You are not to be concerned with the wisdom of any rule of law. It is your duty to follow the law as I state it, and to apply the law to the facts as you find them from the evidence.

It is your duty to base your verdict on the legal principles that I give to you, even if you believe that my instruction is wrong or that the legal principle is unwise. It would be a violation of your sworn duty for you to base a verdict upon any view of the law that differs from the instructions of the Court.

Local Boilerplate

JURY INSTRUCTION NO. 2.

(Instructions as a Whole)

In my instructions, I may state some rules or ideas in varying ways. I do this to make the rule or idea clear and not to emphasize it over the other instructions. You are not to single out any certain sentence or individual point or instruction and ignore the others. Rather, you are to consider all of my instructions as a whole, and you are to regard each instruction in light of all others.

Local Boilerplate

JURY INSTRUCTION NO. 3.

(Duty to Follow Instructions)

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. The parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. The law is no more respectful of one person than another, and all persons stand equal before the law and are to be dealt with as equals in a court of justice.

Local Boilerplate

JURY INSTRUCTION NO. 4.

(Jury Determines Facts)

You, and only you, are the judges of the facts. If any expression of mine, or anything I may or may not have done or said, would seem to indicate my opinion as to the facts, I instruct you to disregard it.

In my instruction, I may refer to some of the evidence, testimony or exhibits in the case. In their closing arguments, counsel will refer to some of the evidence, testimony or exhibits. In reaching your verdict, you are not limited to the evidence referred to by counsel or by me. You may consider any evidence that you believe to be influential.

Local Boilerplate

JURY INSTRUCTION NO. 5.

(Consideration of the Evidence)

It is your duty to determine the facts. In doing so, you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses, the exhibits admitted in the record, and any stipulations reached between the parties.

Remember that any statements, objections, or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not controlling.

The evidence does not include questions. Only the answers are evidence. But you may not consider any answer that I directed you to disregard or that I directed struck from the record. Do not consider such answers.

While you must base your verdict solely on the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

Local Boilerplate

Sand, Modern Federal Jury Instructions, 2-3 (additional language)

JURY INSTRUCTION NO. 6.

(The Government as a Party)

A jury must view the case objectively and dispassionately. The jury must never be swayed by sympathy, favoritism, prejudice, or bias. To use a well-worn baseball analogy, the jury, like an ideal baseball umpire, must call the plays objectively (call them as you see them).

In other words, the jury must neutrally and objectively weigh the evidence and reach a verdict based solely on the evidence in the case. The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a litigation. By the same token, the government is entitled to no less consideration. All parties, whether government or an individual, stand as equals at the bar of justice.

Local Boilerplate

Sand, Modern Federal Jury Instructions, 2-5 (modified)

JURY INSTRUCTION NO. 7.

(Improper Consideration)

Your verdict must be based solely upon the evidence developed at trial or the lack of evidence.

A jury should never be influenced by a defendant's race, religion, national origin, sex, or age. Such considerations are irrelevant. All persons are equal in a court of law, and they are entitled to a fair and impartial trial.

It would be equally improper for you to allow any feelings you might have about the nature of the crimes charged to interfere with your decision making process.

To repeat, your verdict must be based exclusively upon the evidence or the lack of evidence in the case.

Sand, Modern Federal Jury Instructions, 2-11(modified)

JURY INSTRUCTION NO. 8.

(Sympathy)

Under your oath as jurors you are not to be swayed by sympathy. You are to be guided solely by the evidence in this case, and the central question that you must ask yourselves as you sift through the evidence is: Has the government proven the guilt of each defendant beyond a reasonable doubt?

It is for you alone to decide whether the government has proven that each defendant is guilty of the crimes charged solely on the basis of the evidence and subject to the law as I charge you. It must be clear to you that once you let fear or prejudice, or bias or sympathy interfere with your thinking there is a risk that you will not arrive at a true and just verdict.

If you have a reasonable doubt as to any defendant's guilt, you should not hesitate for any reason to find a verdict of acquittal for that defendant. But on the other hand, if you should find that the government has met its burden of proving a defendant's guilt beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to render a verdict of guilty for that defendant.

Sand, Modern Federal Jury Instructions, 2-12

JURY INSTRUCTION NO. 9.

(Punishment)

The question of possible punishment of a defendant is of no concern to the jury and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the court. Your function is to weigh the evidence in the case and to determine whether or not a defendant is guilty beyond a reasonable doubt, solely upon the basis of such evidence. Under your oath as jurors, you cannot allow a consideration of the punishment which may be imposed upon a defendant, if he is convicted, to influence your verdict, in any way, or, in any sense, enter into your deliberations.

Local Boilerplate

JURY INSTRUCTION NO. 10.

(Jury to Consider Only This Defendant)

You are about to be asked to decide whether or not the government has proven beyond a reasonable doubt the guilt of this defendant. You are not being asked whether any other person has been proven guilty. Your verdict should be based solely upon the evidence or lack of evidence as to this defendant, in accordance with my instructions and without regard to whether the guilt of other people has or has not been proven.

Sand, Modern Federal Jury Instructions, 2-18

JURY INSTRUCTION NO. 11.

(Indictment is Not Evidence)

With these preliminary instructions in mind, let us turn to the charges against the defendant, as contained in the indictment. I remind you that the indictment itself is not evidence. It merely describes the charges made against the defendant. It is an accusation. It may not be considered by you as any evidence of the guilt of the defendant.

In reaching your determination of whether the government has proven the defendant guilty beyond a reasonable doubt, you may consider only the evidence introduced or lack of evidence.

Sand, Modern Federal Jury Instructions, 3-1

JURY INSTRUCTION NO. 12.

(Consider Only the Charges)

The defendant is not charged with committing any crimes other than the offenses contained in the indictment.

Sand, Modern Federal Jury instructions, 3-3 (modified)

JURY INSTRUCTION NO. 13.

(Variance – Dates)

While we are on the subject of the indictment, I should draw your attention to the fact that the indictment charges that specific acts and offenses occurred on or about a certain date. The proof need not establish with any certainty the exact date of the specific acts or offenses. The law only requires a substantial similarity between the dates alleged in the indictment and the dates established by testimony or exhibits.

Sand, Modern Federal Jury Instructions, 3-12 (modified); Devitt and Blackmar, Federal Jury Practice and Instructions, § 13.05 (modified)

JURY INSTRUCTION NO. 13.1

(Variance – Amounts)

The law only requires a substantial similarity between the indictment and the proof; that is sufficient.

Thus, if the indictment charges that a certain amount was involved, and the testimony or exhibits indicate that, in fact, a different amount was involved, it is for you to determine whether the difference is material and, if you find it was material, then you must find the defendant not guilty.

Sand, Modern Federal Jury Instructions, 3-13

JURY INSTRUCTION NO. 14.

(Presumption of Innocence -- Burden of Proof)

Although the defendant has been indicted, you must remember that an indictment is only an accusation. It is not evidence. The defendant has pleaded not guilty to that indictment.

As a result of the defendant's plea of not guilty, the burden is on the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

The law presumes a defendant to be innocent of all the charges against him. I therefore instruct you that the defendant is presumed by you to be innocent throughout your deliberations until such time, if ever, you as a jury are satisfied that the government has proven him guilty beyond a reasonable doubt.

The defendant began the trial here with a clean slate. This presumption of innocence alone is sufficient to acquit a defendant unless you as jurors are unanimously convinced beyond a reasonable doubt of his guilt, after a careful and impartial consideration of all of the evidence in this case. If the government fails to sustain its burden against any defendant, you must find that defendant not guilty.

This presumption was with the defendant when the trial began and remains with each even now as I speak to you and will continue with the defendant into your deliberations unless and until you are convinced that the government has proven the defendant's guilt beyond a reasonable doubt.

Sand, Modern Federal Jury Instructions, 4-1

JURY INSTRUCTION NO. 15.

(Direct and Circumstantial Evidence)

As I mentioned to you at the beginning of the trial, there are, generally speaking, two types of evidence from which a jury may properly find the truth. One is direct evidence – such as the testimony of an eyewitness. For example, when a witness testifies to what he or she saw, heard or observed, that is called direct evidence.

The other is circumstantial evidence – the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. To give a simple example, suppose that when you came into the courthouse today the sun was shining and it was a nice day, but the courtroom blinds were drawn and you could not look outside. Then later, as you were sitting here, someone walked in with a dripping wet umbrella and, soon after, somebody else walked in with a dripping wet raincoat. Now, on our assumed facts, you cannot look outside of the courtroom and you cannot see whether or not it is raining. So you have no direct evidence of that fact. But, on the combination of the facts about the umbrella and the raincoat, it would be reasonable for you to infer that it had begun to rain.

That is all there is to circumstantial evidence. Using your reason and experience, you infer from established facts the existence or the nonexistence of some other fact. Please note, however, that it is not a matter of speculation or guess: it is a matter of logical inference.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

Local Boilerplate

Sand, Modern Federal Jury Instructions, Instruction 5-2 (additional language)

JURY INSTRUCTION NO. 16.

(Direct and Circumstantial Evidence)

(Testimony, Exhibits, Stipulations, and Judicial Notice in General) (if applicable)

The evidence in this case consists of the sworn testimony of the witnesses, the exhibits received in evidence, and any stipulations and judicially noticed facts, if any.

Exhibits which have been marked for identification but not received into evidence may not be considered by you as evidence. Only those exhibits received into evidence may be considered as evidence.

Similarly, you are to disregard any testimony when I have ordered it to be stricken. As I indicated before, only the witnesses' answers are evidence and you are not to consider a question as evidence. Similarly, statements by counsel are not evidence.

You should consider the evidence in light of your own common sense and experience, and you may draw reasonable inferences from the evidence.

Anything you may have seen or heard about this case outside the courtroom is not evidence and must be entirely disregarded.

Sand, Modern Federal Jury Instructions, Instruction 5-4

JURY INSTRUCTION NO. 17.

(Transcripts of Tape Recordings)

The government has been permitted to hand out a typed document that it prepared containing the government's interpretation of what appears on the tape recordings which have been received as evidence. Those were given to you as an aid or guide to assist you in listening to the tapes. However, they are not in and of themselves evidence. Therefore, when the tapes were played I advised you to listen very carefully to the tapes themselves. You alone should make your own interpretation of what appears on the tapes based on what you heard. If you think you heard something differently than appeared on the transcript then what you heard is controlling.

Let me say again, you, the jury, are the sole judges of the facts.

Sand, Modern Federal Jury Instructions, Instruction 5-9

JURY INSTRUCTION NO. 18.

(Charts and Summaries (Admitted As Evidence))

The government (or defense) has presented exhibits in the form of charts and summaries. I decided to admit these charts and summaries in place of the underlying documents that they represent in order to save time and avoid unnecessary inconvenience. You should consider these charts and summaries as you would any other evidence.

Sand, Modern Federal Jury Instructions, Instruction 5-12

JURY INSTRUCTION NO. 19.

(Charts and Summaries (Not Admitted As Evidence))

The government has presented exhibits in the form of charts and summaries. These charts and summaries were shown to you in order to make the other evidence more meaningful and to aid you in considering the evidence. They are no better than the testimony or the documents upon which they are based, and are not themselves independent evidence. Therefore, you are to give no greater consideration to these schedules or summaries than you would give to the evidence upon which they are based.

It is for you to decide whether the charts, schedules or summaries correctly present the information contained in the testimony and in the exhibits on which they were based. You are entitled to consider the charts, schedules and summaries if you find that they are of assistance to you in analyzing and understanding the evidence.

Sand, Modern Federal Jury Instructions, Instruction 5-13

JURY INSTRUCTION NO. 20.

(Silence as Admission)

There has been testimony that the defendant was silent when statements were made in his presence accusing him of committing the acts charged in the indictment. If you find that the defendant actually was present, and heard the statements and understood them, then you may consider the defendant's silence as an admission of their truth, if you find, in accordance with your common sense and experience, that the defendant would have denied the statements had they been untrue. However, you should bear in mind that some people will remain silent, even if they are innocent.

Sand, Modern Federal Jury Instructions, Instruction 5-22

JURY INSTRUCTION NO. 21.

(Specific Investigation Techniques Not Required)

During the trial you have heard testimony of witnesses and argument by counsel that the government did not utilize specific investigative techniques. You may consider these facts in deciding whether the government has met its burden of proof, because as I told you, you should look to all of the evidence or lack of evidence in deciding whether the defendant is guilty. However, you also are instructed that there is no legal requirement that the government use any of these specific investigative techniques to prove its case.

Your concern, as I have said, is to determine whether or not, on the evidence or lack of evidence, the defendant's guilt has been proven beyond reasonable doubt.

Sand, Modern Federal Jury Instructions, 4-4 (modified)

JURY INSTRUCTION NO. 22.

(Stipulation of Facts and Testimony) (if applicable)

A stipulation of facts is an agreement among the parties that a certain fact is true. You must regard such agreed facts as true.

A stipulation of testimony is an agreement among the parties that, if called, a witness would have given certain testimony. You must accept as true the fact that the witness would have given that testimony in court. However, it is for you to determine the effect to be given that testimony.

Sand, Modern Federal Jury Instructions, 74-4

Sand, Modern Federal Jury Instructions, Instruction 5-7 (additional language)

JURY INSTRUCTION NO. 23.

(Inference Defined)

During the trial you have heard the attorneys use the term "inference," and in their arguments they have asked you to infer, on the basis of your reason, experience and common sense, from one or more established facts, the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact which you know exists.

There are times when different inferences may be drawn from facts, whether proven by direct or circumstantial evidence. The government asks you to draw one set of inferences, while the defense asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion that you, the jury, are permitted to draw-but not required to draw-from the facts that have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense.

So, while you are considering the evidence presented to you, you are permitted to draw, from the facts that you find to be proven, such reasonable inferences as would be justified in light of your experience.

Here again, let me remind you that, whether based on direct or circumstantial evidence, or on the logical, reasonable inferences drawn from such evidence, you must be satisfied of the guilt of each defendant beyond a reasonable doubt before you may convict.

Sand, Modern Federal Jury Instructions, 6-1 (modified)

Sand, Modern Federal Jury Instructions 6-1 (additional language)

JURY INSTRUCTION NO. 23.1

(Impermissible to Infer Participation from Mere Presence)

You may not infer that a defendant is guilty of participating in criminal conduct merely from the fact that he was present at the time the crime was being committed and had knowledge that it was being committed.

Sand, Modern Federal Jury Instructions, 6-3.

JURY INSTRUCTION NO. 24.

(Knowledge, Willfulness, Intent)

In a criminal case, a defendant may be found guilty only if he acted willfully, intentionally, or with knowledge. Knowledge, willfulness, and intent involve the state of a person's mind. Accordingly, this is a fact you are called upon to decide.

Medical science has not yet devised an instrument which can record what was in one's mind in the distant past. Rarely is direct proof available to establish the state of one's mind. This may be inferred from what he says or does: his words, his actions, and his conduct, as of the time of the occurrence of certain events.

Sand, Modern Federal Jury Instructions, 6-17 (modified)

JURY INSTRUCTION NO. 25.

(Using Motive For Intent)

Proof of motive is not a necessary element of the crime with which the defendant is charged. Proof of motive does not establish guilt, nor does a lack of proof of motive establish that a defendant is not guilty.

If the guilt of a defendant is shown beyond a reasonable doubt, it is immaterial what the motive for the crime may be, or whether any motive be shown, but the presence or absence of motive is a circumstance that you may consider as bearing on the intent of a defendant.

Sand, Modern Federal Jury Instructions, Instruction 6-18

JURY INSTRUCTION NO. 26.

(Credibility of Witnesses)

Now, I have said that you should weigh and consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness, you should consider his or her relationship to the government ~~plaintiffs~~ or to the defendant; his or her interest, if any, in the outcome of the case; his or her manner of testifying; his or her opportunity to observe or acquire knowledge concerning the facts about which he or she testified; his or her candor, fairness and intelligence; and the extent to which he or she has been supported or contradicted by other credible evidence. In short, you may accept or reject the testimony of any witness in whole or in part.

It is legitimate for an attorney to seek to discredit or impeach a witness by, among other things, demonstrating that all or part of the witness's testimony is materially false. Likewise, an attorney may seek to impeach a witness by demonstrating that the witness made a prior inconsistent statement. This is done by showing that before trial the witness made a statement that is inconsistent with or contradicts the witness's trial testimony.

If you find that a witness has been impeached you must decide what impact, if any, the impeachment has on the believability of the witness's testimony. The believability of witnesses is for you and you alone to decide.

BASIC PATTERN JURY INSTRUCTIONS, Civil Cases, U.S. Fifth Circuit

JURY INSTRUCTION NO. 27.

(Defendant's Interest If Defendant Testifies) (if applicable)

In a criminal case, the defendant cannot be required to testify, but, if he chooses to testify, he is, of course, permitted to take the witness stand on his own behalf. In this case, defendant(s) [NAME(S)] decided to testify. You should examine and evaluate his/their testimony just as you would the testimony of any witness with an interest in the outcome of this case.

Sand, Modern Federal Jury Instructions, Instruction 7-4

JURY INSTRUCTION NO. 28.

(Impeachment of Defendant by Prior Felony Conviction) (if applicable)

As I instructed you earlier, the defendant in a criminal case never has any duty or obligation to testify or come forward with any evidence. This is because the burden of proof beyond a reasonable doubt remains on the government at all times, and the defendant is presumed innocent.

In this case, defendant(s) [NAME(S)] did testify and he/they was/were subject to cross-examination, like any other witness. You learned during his testimony that the defendant was previously convicted of a crime. This prior conviction was received into evidence for the sole purpose of helping you to decide how much of his testimony to believe. I want to caution you that you may not consider the defendant's prior conviction in any way, except for the limited purpose of helping you decide how much of his testimony to believe and what weight, if any, to give it. You are specifically instructed that you may not consider the defendant's prior conviction as any evidence of his guilt in this case.

Sand, Modern Federal Jury Instructions, Instruction 7-13

JURY INSTRUCTION NO. 29.

(Party Not Bound by Witness)

No party is bound by the testimony of the witnesses called by that party.

Each party is entitled to contradict or rebut the testimony of any witness called by them.

After making your own judgment, you may give the testimony of each witness such weight, if any, as you may think it deserves.

Local Boilerplate

JURY INSTRUCTION NO. 30.

(Number of Witnesses)

The test is not which side brings the greater number of witnesses, or presents the greater quantity of evidence, but, rather, which witness and which evidence appeals to your minds as being most accurate and otherwise trustworthy.

Local Boilerplate

JURY INSTRUCTION NO. 31.

(Improper Consideration of Defendant's Right Not to Testify) (if applicable)

The defendant did not testify in this case. Under our constitution, a defendant has no obligation to testify or to present any other evidence because it is the prosecution's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the prosecution throughout the entire trial and never shifts to the defendant. The defendant is never required to prove that he is innocent.

You may not attach any significance to the fact that the defendant did not testify. No adverse inference against them may be drawn by you because he did not take the witness stand. You may not consider this against the defendant in any way in your deliberations in the jury room.

Sand, Modern Federal Jury Instructions, 5-12

JURY INSTRUCTION NO. 32.

(Bias and Hostility)

This is an instruction I give in all criminal cases. In connection with your evaluation of the credibility of the witnesses, you should specifically consider evidence of resentment or anger which some government witnesses may have towards a defendant. Likewise, you should consider evidence of resentment or anger which some witnesses may have towards the government.

In any trial, evidence that a witness is biased, prejudiced or hostile toward a defendant or the government requires the jury to view that witness's testimony with caution, to weigh it with care, and subject it to close and searching scrutiny.

Sand, Modern Federal Jury Instructions, 7-2 (modified)

JURY INSTRUCTION NO. 33.

(All Available Evidence Need Not Be Produced)

The law does not require the prosecution to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial.

Sand, Modern Federal Jury Instructions, 7-12

JURY INSTRUCTION NO. 34.

(Law Enforcement Witnesses)

You have heard the testimony of several law enforcement officials. The fact that a witness may be employed ~~by the federal government~~ as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

Sand, Modern Federal Jury Instructions, Instruction 7-16

JURY INSTRUCTION NO. 35.

(Impeachment by Prior Inconsistent Statement) (if applicable)

You have heard evidence that a witness made a statement on an earlier occasion that counsel argues is inconsistent with the witness' trial testimony. Evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence bearing on the defendant's guilt. Evidence of the prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself. If you find that the witness made an earlier statement that conflicts with his trial testimony, you may consider that fact in deciding how much of his trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency, and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so how much, if any, weight to be given to the inconsistent statement in determining whether to believe all or part of the witness' testimony.

Sand, Modern Federal Jury Instructions, Instruction 7-19

JURY INSTRUCTION NO. 36.

(Expert Witness (Generally))

In this case, I have permitted certain witnesses to express their opinions about matters that are in issue. A witness may be permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience and training. Such testimony is presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing this opinion testimony, you may consider the witness' qualifications, his or her opinions, the reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness' testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. Nor should you substitute it for your own reason, judgment and common sense. The determination of the facts in this case rests solely with you.

Sand, Modern Federal Jury Instructions, 7-21

JURY INSTRUCTION NO. 37.

(Testimony as Both Expert and Lay Witness) (if applicable)

You have heard the testimony of [name of witness] who testified to both facts and opinions. You should consider each of those types of testimony separately, and give them the proper weight.

As to the testimony about facts, you should consider the factors that I discussed earlier in these instructions about how to weigh the credibility of witnesses.

As to the testimony that included opinions, you may consider the witness's qualifications, his or her opinions, the reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness's testimony. You should not, however, accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. Nor should you substitute it for your own reason, judgment and common sense. The determination of the facts in this case rests solely with you.

Again you may give both the fact testimony and the opinion testimony whatever weight, if any, you find it deserves in light of all the evidence in this case.

Sand, Modern Federal Jury Instructions, Instruction 7-24

JURY INSTRUCTION NO. 38.

(Search Warrant)

You have also heard testimony in this case regarding evidence seized by the government during the execution of search warrants. You are hereby instructed that it is the responsibility of the Court alone to determine the validity and legality of those search warrants. It is up to you to decide what significance, if any, the evidence seized may have in this case.

JURY INSTRUCTION NO. 39.

(Court Rulings)

At times throughout the trial, the Court has been called upon to pass on the admissibility of certain offered evidence. You should not be concerned with the Court's rulings or the reasons for them; whether evidence that has been offered is admissible or not is purely a question of law and a matter left to the Court.

In admitting evidence to which an objection has been made, the Court does not determine what weight should be given to such evidence.

You must not guess what the answer might have been to any question to which an objection was sustained, and you must not speculate as to the reason the question was asked or the reason for the objection.

Local Boilerplate

JURY INSTRUCTION NO. 40.

(Introduction to the Charges)

The instructions which I have just given to you are more or less of a general nature applicable to all criminal cases before this Court.

The indictment contains a total of three counts. Each count charges the defendant with a different crime. You must consider each count separately and return a separate verdict of guilty or not guilty for each. Whether you find the defendant guilty or not guilty as to one offense should not affect your verdict as to any other offense charged.

Sand, Modern Federal Jury Instructions, Instruction 3-6

JURY INSTRUCTION NO. 41.

(Possession of a Firearm by a Convicted Felon – The Indictment and Statute)

The indictment charges the Defendant with one count of Possession of a Firearm by a Convicted Felon. The indictment reads as follows:

[Read Indictment]

The relevant statute on this subject is section 922(g)(1) of Title 18 of the United States Code, which provides:

> It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year … to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Sand, Modern Federal Jury Instructions, 35-45; 18 U.S.C. § 922(g)(1)

JURY INSTRUCTION NO. 42.

(Possession of a Firearm by a Convicted Felon – Elements of the Offense)

The government must prove each of the following elements beyond a reasonable doubt in order to sustain its burden of proving the defendant guilty:

First, that the defendant was convicted in any court of a crime punishable by imprisonment for a term exceeding one year, as charged;

Second, that the defendant knowingly possessed the firearm, as charged; and

Third, that the possession charged was in or affecting interstate (or foreign) commerce.

Sand, Modern Federal Jury Instructions, 35-47

JURY INSTRUCTION NO. 43.

(Possession of a Firearm by a Convicted Felon – First Element: Defendant's Prior Conviction)

The first element the government must prove beyond a reasonable doubt is that prior to the date the defendant is charged with possessing the firearm, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year and that the state has not restored the defendant's civil rights following that conviction.

The government contends that the defendant was convicted of Bank Fraud Conspiracy and Aggravated Identity Theft in federal court. I charge you that as a matter of law, Bank Fraud Conspiracy and Aggravated Identity Theft are each crimes punishable by imprisonment for a term exceeding one year. However, it is for you to determine beyond a reasonable doubt whether the defendant was convicted of this crime.

To satisfy this first element, you must find beyond a reasonable doubt that the defendant was, in fact, convicted of that crime and that the conviction was prior to the possession of the weapon as charged in the indictment. The government must also prove that the defendant knew that the crime was punishable by imprisonment for more than one year. However, it is not necessary for the defendant to actually have been sentenced to imprisonment for more than one year. A plea of guilty has the same consequences as a conviction after trial.

(If the parties stipulate, substitute: The parties have stipulated that the defendant was convicted of a crime in state (or federal) court and that this crime is punishable by imprisonment for a term exceeding one year. It has also been stipulated that this felony conviction occurred prior to the time that the defendant is alleged to have possessed the weapon charged in the indictment.)

I instruct you, in this connection, that the prior conviction that is an element of the charge here (and is not disputed) is only to be considered by you for the fact that it exists, and for nothing else. You are not to consider it for any other purpose. You are not to speculate as to what it was

for. You may not consider the prior conviction in deciding whether it is more likely than not that the defendant was in knowing possession of the gun that is charged, which is the disputed element of the offense.

Sand, Modern Federal Jury Instructions, 35-48

JURY INSTRUCTION NO. 44.

(Possession of a Firearm by a Convicted Felon – Second Element: Possession of Firearm)

The second element that the government must prove beyond a reasonable doubt is that on or about the date set forth in the indictment the defendant knowingly possessed a firearm.

A "firearm" is any weapon that will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

To "possess" means to have something within a person's control. This does not necessarily mean that the defendant must hold it physically, that is, have actual possession of it. As long as the firearm is within the defendant's control, he possesses it. If you find that the defendant either had actual possession of the firearm, or that he had the power and intention to exercise control over it, even though it was not in his physical possession, you may find that the government has proven possession.

The law also recognizes that possession may be sole or joint. If one person alone possesses it, that is sole possession. However, it is possible that more than one person may have the power and intention to exercise control over the firearm. This is called joint possession. If you find that the defendant had such power and intention, then he possessed the firearm under this element even if he possessed it jointly with another. Proof of ownership of the firearm is not required.

To satisfy this element, you must also find that the defendant knowingly possessed the firearm. This means that he possessed the firearm purposely and voluntarily, and not by accident or mistake. It also means that he knew that the weapon was a firearm, as we commonly use the word. However, the government is not required to prove that the defendant knew that he was breaking the law.

Sand, Modern Federal Jury Instructions, 35-49

JURY INSTRUCTION NO. 45.

(Possession of a Firearm by a Convicted Felon – Third Element: Firearm in or Affecting Commerce)

The third element that the government must prove beyond a reasonable doubt is that the firearm the defendant is charged with possessing was in or affecting interstate commerce.

This means that the government must prove that at some time prior to the defendant's possession, the firearm had traveled in interstate commerce. It is sufficient for the government to satisfy this element by proving that at any time prior to the date charged in the indictment, the firearm crossed a state line. It is not necessary that the government prove that the defendant himself carried it across a state line, nor must the government prove who carried it across or how it was transported. It is also not necessary for the government to prove that the defendant knew that the firearm had previously traveled in interstate commerce.

In this regard, there has been evidence that the firearm in question was manufactured in a different state than the state where the defendant is charged with possessing it. You are permitted to infer from this fact that the firearm traveled in interstate commerce; however, you are not required to do so.

Sand, Modern Federal Jury Instructions, 35-50

JURY INSTRUCTION NO. 46.

(Possession With Intent To Distribute Controlled Substances – The Indictment and Statute)

The defendant is also charged with each charged with possession with intent to distribute controlled substances, as charged in Count Three of the Indictment.

The Indictment reads as follows:

[Read Indictment]

The defendant is charged with violating the Drug Abuse Prevention and Control Act. That law makes it a crime "for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."

Sand, Modern Federal Jury Instructions, 56-01

JURY INSTRUCTION NO. 47.

(Possession With Intent To Distribute Controlled Substances – Elements of the Offense)

In order to prove this charge against the defendant, the government must establish beyond a reasonable doubt each of the following three elements of the crime:

First, that the defendant possessed narcotic drugs;

Second, that the defendant knew that he possessed narcotic drugs; and

Third, that the defendant possessed the narcotic drugs with the intent to distribute them.

Sand, Modern Federal Jury Instructions, 56-02

JURY INSTRUCTION NO. 48.

(First Element: Possession of Narcotics)

The first element the government must prove beyond a reasonable doubt is that the defendant possessed fentanyl.

To establish this element, the government must prove that the material that the defendant is charged with possessing is, in fact, fentanyl. The government may prove this through either direct evidence or through circumstantial evidence. An example of direct evidence is the testimony of a chemist who has done a chemical analysis of the material. Circumstantial evidence would be evidence from which you could infer that the material was fentanyl, such as testimony concerning the names used by the defendant to refer to the material or testimony about the material's appearance. Whether the government relies on direct or circumstantial evidence to prove that the material in issue was fentanyl, it must prove so beyond a reasonable doubt.

Sand, Modern Federal Jury Instructions, 56-03.

JURY INSTRUCTION NO. 49.

(Definition of Possession)

As I have instructed you, the government must prove beyond a reasonable doubt that the defendant "possessed" the drugs. The legal concept of possession may differ from the everyday usage of the term, so I will explain it in some detail.

Actual possession is what most of us think of as possession; that is having physical custody or control of an object. For example, if you find that the defendant had the drugs on his person, you may find that he had possession of the drugs. However, a person need not have actual physical custody of an object in order to be in legal possession of it. If an individual has the ability and intent to exercise substantial control over an object that he does not have in his physical custody, then he is in possession of that item. An example of this from everyday experience would be a person's possession of items he keeps in the safe deposit box of his bank. Although the person does not have physical custody of those items, he exercises substantial control over them and so has legal possession of them.

The law also recognizes that possession may be sole or joint. If one person alone possesses something, that is sole possession. However, it is possible that more than one person may have the power and intention to exercise control over the drugs. This is called joint possession. If you find that the defendant had such power and intention, then he possessed the drugs under this element even if he possessed the drugs jointly with another.

Here is an example. Suppose A is negotiating the price of heroin with C. Standing next to A is B, who has several envelopes of heroin in his pocket. After a period of negotiation, A directs B to hand over to C a few of the envelopes. C then hands A some money. In this situation, you could find that B had possession of the narcotics because he had them in his pocket. However, you could find that A also had possession of the narcotics because of his proximity to the drugs, his

association with B, the person in actual possession of them, and his negotiations over price. This example is not conclusive, but is simply meant to illustrate these concepts.

Possession of drugs cannot be found solely on the ground that the defendant was near or close to the drugs. Nor can it be found simply because the defendant was present at a scene where drugs were involved, or solely because the defendant associated with a person who did control the drugs or the property where they were found. However, these factors may be considered by you, in connection with all other evidence, in making your decision whether the defendant possessed the drugs.

Sand, Modern Federal Jury Instructions, 56-04

JURY INSTRUCTION NO. 50.

(Inference From Control Over Place Where Found)

A defendant may own or have control over the place where the narcotics are found, such as an apartment or a vehicle. When the defendant is the sole person having such ownership or control, this control is significant evidence of the defendant's control over the drugs themselves, and thus of his possession of the drugs. You should note, however, that the defendant's sole ownership or control of a residence or vehicle does not necessarily mean that the defendant had control and possession of the drugs found in it.

A defendant may also share ownership or control of the place where drugs are found. In this event the drugs may be possessed by only one person, or by some of the people who control the place, or by all of them. However, standing alone, the fact that a particular defendant had joint ownership or control over the place where the drugs were found is not sufficient evidence to find that the defendant possessed the drugs found there. In order to find that a particular defendant possessed drugs because of his joint ownership or control over the place where they were found, you must find beyond a reasonable doubt that the defendant knew about the presence of the drugs and intended to exercise control over them.

Sand, Modern Federal Jury Instructions, 56-05

JURY INSTRUCTION NO. 51.

(Second Element: Knowledge That the Drugs Were Narcotics)

The second element the government must prove beyond a reasonable doubt is that the defendant knew that he possessed narcotics.

To establish this element, the government must prove that the defendant knew that he possessed narcotics, and that his possession was not due to carelessness, negligence or mistake. If you find that the defendant did not know that he had narcotics in his possession, or that he didn't know that what he possessed was, in fact, narcotics, then you must find the defendant not guilty.

Although the government must prove that the defendant knew that he possessed narcotics, the government does not have to prove that the defendant knew the exact nature of the drugs in his possession. It is enough that the government proves that the defendant knew that he possessed some kind of narcotic.

Sand, Modern Federal Jury Instructions, 56-06

JURY INSTRUCTION NO. 52.

(Method of Proving Knowledge)

Your decision whether the defendant knew the materials he possessed were narcotics involves a decision about the defendant's state of mind. It is obviously impossible to prove directly the operation of the defendant's mind. But a wise and intelligent consideration of all the facts and circumstances shown by the evidence and the exhibits in the case may enable you to infer what the defendant's state of mind was.

In our everyday affairs, we are continuously called upon to decide from the actions of others what their state of mind is. Experience has taught us that, frequently, actions speak louder and more clearly than spoken or written words. Therefore, you may well rely in part on circumstantial evidence in determining the defendant's state of mind.

For example, if the defendant was the sole occupant of a residence or a vehicle, it is reasonable to conclude that the defendant knew about items in the residence or vehicle. The defendant's behavior may also indicate knowledge. Nervousness in the presence of the drugs or flight from the site at which authorities have identified drugs may indicate that the defendant knew that the materials in question were narcotics. Also, the possession of a large quantity of drugs may indicate that the defendant knew what he had in his possession. These examples are neither exhaustive nor conclusive. It is up to you, based on all the evidence, to determine whether the defendant knew that he possessed narcotics.

Sand, Modern Federal Jury Instructions, 56-07

JURY INSTRUCTION NO. 53.

(Third Element: Distribution or Intent To Distribute)

The third element the government must prove beyond a reasonable doubt is that the defendant either (a) distributed the narcotics or (b) intended to distribute them. In order to prove the defendant is guilty, the government must prove one of these circumstances beyond a reasonable doubt. It need not prove both.

Sand, Modern Federal Jury Instructions, 56-09

JURY INSTRUCTION NO. 54.

(Definition of Distribution)

The word "distribute" means to deliver a narcotic. "Deliver" is defined as the actual, constructive or attempted transfer of a narcotic. Simply stated, the words distribute and deliver mean to pass on, or to hand over to another, or to cause to be passed on or handed over to another, or to try to pass on or hand over to another, narcotics.

Distribution does not require a sale. Activities in furtherance of the ultimate sale, such as vouching for the quality of the drugs, negotiating for or receiving the price, and supplying or delivering the drugs may constitute distribution. In short, distribution requires a concrete involvement in the transfer of the drugs.

Sand, Modern Federal Jury Instructions, 56-10

JURY INSTRUCTION NO. 55.

(Intent to Distribute)

As an alternative to proving that the defendant actually distributed the drugs, to satisfy the third element the government may prove that the defendant possessed narcotics with the intent to distribute them. To prove the third element in this way, the government must prove beyond a reasonable doubt that the defendant had control over the drugs with the state of mind or purpose to transfer them to another person.

The same considerations that apply to your determination whether the defendant knew he possessed narcotics apply to your decision concerning the defendant's intention to distribute them. Since you cannot read the defendant's mind, you must make inferences from his behavior. However, you may not convict the defendant unless these inferences convince you beyond a reasonable doubt that the defendant intended to distribute the narcotics.

Basically, what you are determining is whether the drugs in the defendant's possession were for his personal use or for the purpose of distribution. Often it is possible to make this determination from the quantity of drugs found in the defendant's possession. For example, it would be highly unlikely that a person with 50,000 doses of amphetamine possessed them all for personal consumption.

The possession of a large quantity of narcotics does not necessarily mean that the defendant intended to distribute them. On the other hand, a defendant may have intended to distribute narcotics even if he did not possess large amounts of them. Other physical evidence, such as paraphernalia for the packaging or processing of drugs, can show such an intent. There might also be evidence of a plan to distribute. You should make your decision whether the defendant intended to distribute the narcotics in his possession from all of the evidence presented.

Sand, Modern Federal Jury Instructions, 56-11

JURY INSTRUCTION NO. 56.

(Amount of Drugs)

If you find that the government has proven beyond a reasonable doubt the three elements that I have just described to you, then there is one more issue that you must decide. I have provided you with a special verdict form asking you to fill in the type and amount of drugs that the defendant possessed or distributed. The burden is on the government to establish the type and amount of drugs beyond a reasonable doubt. Remember, you should address this issue and complete the form only if you find the first three elements to have been established. If you did not find that the government has proven all three elements, then do not complete this form.

Sand, Modern Federal Jury Instructions, 56-12

JURY INSTRUCTION NO. 57.

(Limiting Instruction)

Under Count Four, the defendant is charged with using or carrying a firearm during the commission of the drug trafficking crime that is charged in Count Three.

If upon all of the evidence you find that the government has failed to prove Count Three beyond a reasonable doubt, then you will proceed no further. Count Four is to be considered only if you first find the defendant guilty under Count Three as charged.

In reaching your verdict on Count Four, you may consider the evidence of Count Three only for the purpose of determining whether the elements of Count Four have been satisfied.

Sand, Modern Federal Jury Instructions, 35-86

JURY INSTRUCTION NO. 58.

(Possession Of A Firearm In Furtherance Of A Drug Trafficking Crime – The Indictment and Statute)

The defendant is also charged with each charged with possession of a firearm in furtherance of a drug trafficking crime, as charged in Count Four of the Indictment.

The Indictment reads as follows:

[Read Indictment]

The relevant statute on this subject is Title 18, United States Code section 924(c), which provides:

> [A]ny person who, during and in relation to any crime of violence or drug trafficking crime … for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall [be guilty of a crime].

Sand, Modern Federal Jury Instructions, 35-85

JURY INSTRUCTION NO. 59.

(Possession Of A Firearm In Furtherance Of A Drug Trafficking Crime – Elements of the Offense)

The government must prove each of the following elements beyond a reasonable doubt to sustain its burden of proving the defendant guilty:

First, that the defendant committed a drug trafficking crime for which he might be prosecuted in a court of the United States.

Second, that the defendant knowingly used (or carried) a firearm during and in relation to the commission of, or knowingly possessed a firearm in furtherance of, the crime charged in Count Three (Possession With Intent To Distribute Controlled Substances).

Sand, Modern Federal Jury Instructions, 35-88

JURY INSTRUCTION NO. 60.

(First Element—Commission of the Predicate Crime)

The first element the government must prove beyond a reasonable doubt is that the defendant committed a drug trafficking crime for which he might be prosecuted in a court of the United States.

Defendant is charged in Count Three of the indictment with committing the crime of Possession With Intent To Distribute Controlled Substances. I instruct you that the crime of Possession With Intent To Distribute Controlled Substances is a drug trafficking crime. However, it is for you to determine that the government has proven beyond a reasonable doubt that the defendant committed the crime of Possession With Intent To Distribute Controlled Substances as charged.

Sand, Modern Federal Jury Instructions, 35-88

JURY INSTRUCTION NO. 61.

(Second Element—Knowing Use of Firearm During and in Relation to the Commission of the Predicate Crime)

The second element the government must prove beyond a reasonable doubt is that the defendant knowingly possessed a firearm in furtherance of the commission of the crime charged in Count Three.

A "firearm" is any weapon that will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

To prove that the defendant possessed the firearm in furtherance of the crime, the government must prove that the defendant had possession of the firearm and that such possession was in furtherance of that crime. Possession means that defendant either had physical possession of the firearm on his person or that he had dominion and control over the place where the firearm was located and had the power and intention to exercise control over the firearm. To possess a firearm in furtherance of the crime means that the firearm helped forward, advance or promote the commission of the crime. The mere possession of the firearm at the scene of the crime is not sufficient under this definition. The firearm must have played some part in furthering the crime in order for this element to be satisfied.

Some factors that you may consider in determining whether a firearm possession was in furtherance of a drug-trafficking crime include but are not limited to the type of drug activity that is being conducted, accessibility of the firearm, the type of weapon, whether the weapon is stolen, the status of the possession (legitimate or illegal), whether the gun is loaded, proximity to drugs or drug profits, and the time and circumstances under which the gun is found.

To satisfy this element, you must also find that the defendant possessed ~~carried or used~~ the firearm knowingly. This means that he possessed ~~carried~~ the firearm purposely and voluntarily,

and not by accident or mistake. It also means that he knew that the weapon was a firearm, as we commonly use the word. However, the government is not required to prove that the defendant knew that he was breaking the law.

Sand, Modern Federal Jury Instructions, 35-89 (modified to include highlighted language from *United States v. Moore*, 769 F.3d 264, 270 (4th Cir. 2014); *Moore*, 769 F.3d at 270 ("Some of the ways a firearm might further, advance, or help forward a drug trafficking crime include defending the dealer's drugs, drug profits, or his person. Firearms may also operate as an enforcement mechanism in a dangerous transactional business or they may serve as a visible deterrent. A number of factors may be considered in making this determination, among them: the type of drug activity that is being conducted, accessibility of the firearm, the type of weapon, whether the weapon is stolen, the status of the possession (legitimate or illegal), whether the gun is loaded, proximity to drugs or drug profits, and the time and circumstances under which the gun is found.") (citations and internal quotation marks omitted).

JURY INSTRUCTION NO. 62.

(Duty to Deliberate)

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to the verdict. In other words, your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration with your fellow jurors of all the evidence in the case. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction, as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember, at all times, that you are not partisans. You are judges – judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

JURY INSTRUCTION NO. 63.

(Communications with Court)

You are about to go into the jury room and begin your deliberations. Upon retiring to the jury room, I suggest that you select a foreperson. A foreperson presides over your deliberations and will serve as your spokesperson here in Court.

Any communication with the Court should be made in writing, signed by your foreperson, and given to one of the U.S. Marshals. I will respond to any questions or requests you have as promptly as possible, either in writing or by having you return to the courtroom so that I can speak with you in person. In any event, do not tell me, or anyone else, how the jury stands until after a unanimous verdict is reached.

If during your deliberations you want to see any of the exhibits, they will be sent to you in the jury room upon request. If you want any of the testimony read, that can also be done. But, please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in requesting exhibits or portions of testimony which you may want.

Your requests for exhibits or testimony--in fact any communication with the court--should be made to me in writing, signed by your foreperson, and given to one of the marshals. I will respond to any questions or requests you have as promptly as possible, either in writing or by having you return to the courtroom so I can speak with you in person. In any event, do not tell me or anyone else how the jury stands on the issue of the defendant's guilt until after a unanimous verdict is reached.

JURY INSTRUCTION NO. 64.

(Duty To Consult and Need for Unanimity)

The government, to prevail, must prove the essential elements by the required degree of proof, as already explained in these instructions. If it succeeds, your verdict should be guilty; if it fails, it should be not guilty. To report a verdict, it must be unanimous.

Your function is to weigh the evidence in the case and determine whether or not the defendant is guilty, solely upon the basis of such evidence.

Each juror is entitled to his or her opinion; each should, however, exchange views with his or her fellow jurors. That is the very purpose of jury deliberation—to discuss and consider the evidence; to listen to the arguments of fellow jurors; to present your individual views; to consult with one another; and to reach an agreement based solely and wholly on the evidence—if you can do so without violence to your own individual judgment.

Each of you must decide the case for yourself, after consideration, with your fellow jurors, of the evidence in the case.

But you should not hesitate to change an opinion that, after discussion with your fellow jurors, appears erroneous.

However, if, after carefully considering all the evidence and the arguments of your fellow jurors, you entertain a conscientious view that differs from the others, you are not to yield your conviction simply because you are outnumbered.

Your final vote must reflect your conscientious conviction as to how the issues should be decided. Your verdict, whether guilty or not guilty, must be unanimous.

Sand, Modern Federal Jury Instructions, Instruction 9-7

JURY INSTRUCTION NO. 65.

(Contact with Others)

During your deliberations, you should not discuss, or provide any information about, the case with anyone. This includes discussing the case in person, in writing, by phone or by any electronic means, via text messaging, e-mail, Facebook, LinkedIn, Twitter, blogging, or any other social media or Internet chat room, web site, or other feature. In other words, do not talk to anyone on the phone or in person, correspond with anyone, or communicate by electronic means about this case with anyone except with your fellow jurors and then only while you are in the jury room.

If you are asked or approached in any way about your jury service or anything about this case, you should respond that you have been ordered by the judge not to discuss the matter, and you should report the contact to the court as soon as possible.

Along the same lines, you should not try to access any information about the case or do research on any issue that arose during the trial from any outside source, including dictionaries, reference books, or anything on the Internet. Information that you may find on the Internet or in a printed reference might be incorrect or incomplete. In our court system, it is important that you not be influenced by anyone or anything outside this courtroom. Your sworn duty is to decide this case solely and wholly on the evidence that was presented to you in this courtroom.

Sand, Modern Federal Jury Instructions, Instruction 2-21

JURY INSTRUCTION NO. 66.

(Retention of Alternate Jurors)

At this time, the regular jurors will begin deliberations. At the same time, I am going to ask that the alternate jurors remain here during deliberations. [Describe where and when alternate jurors should be present in courthouse.]

During the time that the jury is deliberating, you should not talk about this case with anyone, even among yourselves. That is, do not discuss it with each other, with the regular jurors, with other people involved in the trial, with court personnel or other people in the courthouse, or with family, friends or anyone else. There is always a possibility until a verdict is reached that one (or more) of you could be called upon to deliberate with the jury, so it is very important that you not talk about the case until a verdict is reached. If anyone even attempts to talk to you about the case, please report that to me immediately.

Sand, Modern Federal Jury Instructions, Instruction 9-15

JURY INSTRUCTION NO. 67.

(Verdict Forms)

A form of special verdict has been prepared for your convenience. You will take this form to the jury room and complete it there. You will have your foreperson fill in, date, and sign the verdict form. You will then return with the completed special verdict to the courtroom.

I caution you that nothing said in these instructions, and nothing in the verdict form, is meant to suggest or convey, in any way or manner, any intimation as to what verdict ***I*** think you should find. What the verdict will be is your sole and exclusive duty and responsibility.

JURY INSTRUCTION NO. 68.

(Reaching Verdict)

In conclusion, let me remind you once again that your verdict must be unanimous, reflecting the judgment of each and every one of you. You should approach the issues of this case in the manner in which you would approach any important matter that you have occasion to determine in the course of your everyday business. Consider them in the jury room deliberately and carefully, in the light of the instructions I have given you, and use the same common sense and the same intelligence that you would employ in determining any important matter that you have to decide in the course of your own affairs.