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JUDGE'S COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

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UNITED STATES OF AMERICA,	*	
	*	
	*	CRIMINAL NO. 01-39
Plaintiff,	*	
	*	
v.	*	
	*	
RICHARD ALLEN ALLEN,	*	
	*	JURY INSTRUCTIONS
Defendant.	*	
	*	

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MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE FOLLOWING INSTRUCTIONS:

INSTRUCTION NO. 1

INTRODUCTION

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, *all* instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

DUTY OF JURY

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 3

EVIDENCE

I have mentioned the word "evidence." The "evidence" in this case consists of:

- 1) the testimony of witnesses,
- 2) the documents and other things received as exhibits,
- 3) the facts that have been stipulated -- this is, formally agreed to by the parties,
- 4) the facts that have been judicially noticed -- this is, facts which I say you may, but are not required to, accept as true, even without evidence.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

- 1) Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.
- 2) Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
- 3) Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
- 4) Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 4

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence—such as the testimony of an eyewitness. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but requires that, before convicting a defendant, the jury be satisfied of a defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

INSTRUCTION NO. 5

CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 6

STATEMENT BY DEFENDANT

You have heard testimony that the defendant, RICHARD ALLEN ALLEN, made statements to law enforcement. It is for you to decide:

First, whether the defendant, RICHARD ALLEN ALLEN, made the statement; and

Second, if so, how much weight you should give it.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statement may have been made.

INSTRUCTION NO. 7

INDICTMENT

The Indictment in this case charges the defendant, RICHARD ALLEN ALLEN as follows:

1) Count One of the Indictment charges that from in or about July 2000 to on or about November 3, 2000, in the Southern District of Iowa, the Defendant committed the crime of knowingly and intentionally conspiring to knowingly and intentionally manufacture 50 grams or more of actual methamphetamine or 500 grams or more of a mixture or substance containing a measurable amount of methamphetamine, in violation of Title 21, United States Code, Section 841(a)(1).

2) Count Two charges that on or about November 3, 2000, in the Southern District of Iowa, the Defendant committed the crime of knowingly and intentionally manufacturing and aiding and abetting in the manufacture of methamphetamine, in quantities up to and exceeding five grams actual methamphetamine, in violation of Title 21, United States Code, Sections 841(a)(1); 841(b)(1)(B); and 841(b)(1)(C), and Title 18, United States Code, Section 2.

3) Count Three charges that on or about November 3, 2000, in the Southern District of Iowa, the Defendant committed the crime of possession of pseudoephedrine with intent to manufacture methamphetamine, in violation of Title 21, United States Code, Section 841(d)(1).

4) Count Four charges that on or about November 3, 2000, in the Southern District of Iowa, the Defendant created a substantial risk to human life while knowingly and intentionally manufacturing methamphetamine, in violation of Title 21, United States Code, Sections 841(a)(1) and 858.

5) Count Five charges that on or about November 3, 2000, in the Southern District of

Iowa, the Defendant knowingly and intentionally either possessed a firearm in furtherance of a drug trafficking offense or used or carried a firearm in furtherance of a drug trafficking offense, specifically conspiracy to manufacture methamphetamine and manufacturing methamphetamine, in violation of Title 18, United States Code, Section 924(c)(1)(A) and 924(c)(1)(A)(i).

6) Count Seven charges that on or about November 3, 2000, in the Southern District of Iowa, the Defendant knowingly and intentionally manufactured methamphetamine, in quantities up to and exceeding five grams actual methamphetamine or exceeding 50 grams of a mixture or substance containing a detectable amount of methamphetamine, within 1000 feet of real property comprising a playground, in violation of Title 21, United States Code, Section 841(a)(1), 841(b)(1)(B), 841(b)(1)(C) and 860..

7) Count Eight charges that on or about March 2, 2001, in the Southern District of Iowa, the defendant knowingly and intentionally possessed methamphetamine, in violation of Title 21, United States Code, Section 844(a).

After you have returned verdicts on these charges, additional evidence, instruction on the law, and summations will be presented; then you will deliberate on a separate charge in Count Six of the Indictment, regardless of your verdicts on Counts 1-5 and 7-8.

The defendant, RICHARD ALLEN ALLEN, has pleaded not guilty to each of these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the Government proves, beyond a reasonable doubt, each essential element of the crime charged.

There is no burden upon a defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

Keep in mind that each count charges a separate crime. You must consider each count separately and return a separate verdict for each count.

INSTRUCTION NO. 8

DEFINITION OF "ON OR ABOUT"

You will have observed that in the Indictment the phrase "on or about" is used with reference to certain dates. It is not necessary that the government prove that all alleged acts occurred on or within the exact dates set forth in the Indictment. The government need only prove that the act charged in the Indictment occurred within a reasonable time of the dates or over an interval of time that includes the dates.

INSTRUCTION NO. 9

PRESUMPTION OF INNOCENCE

The defendant is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion which might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial and alone is sufficient to find him not guilty. The presumption of innocence may be overcome only if the prosecution proves, beyond a reasonable doubt, each element of the crime charged against the defendant.

INSTRUCTION NO. 10

COUNT ONE: ELEMENTS OF THE OFFENSE (CONSPIRACY TO MANUFACTURE
METHAMPHETAMINE)

The crime of conspiracy to manufacture methamphetamine, as charged in Count One of the Indictment, has three essential elements, which are:

- 1) From in or about July 2000, and continuing to on or about November 3, 2000, in the Southern District of Iowa and elsewhere, two or more persons reached an agreement or came to an understanding to knowingly and intentionally manufacture methamphetamine.
- 2) The defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and
- 3) At the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

For you to find the defendant guilty of the crime charged under Count One, the government must prove all of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of this crime under Count One.

INSTRUCTION NO. 11

AGREEMENT

In Count One of the Indictment, the crime of conspiracy is charged against the Defendant. The Government must prove that defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is a defendant or named in the Indictment.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

Mere similarity of conduct among various persons, and the fact that they may have associated with each other and may have assembled together and discussed common aims and interests, does not necessarily prove the existence of a conspiracy.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

You must decide, after considering all of the evidence, whether the conspiracy alleged in Count One of the Indictment existed. The agreement may be inferred from all the circumstances and the conduct of the alleged participants. If you find that the alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

INSTRUCTION NO. 12

SUCCESS OF CONSPIRACY NOT REQUIRED

It is not necessary for the Government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

INSTRUCTION NO. 13

CONSPIRACY: CO-CONSPIRATOR ACTS AND STATEMENTS

You may consider acts knowingly done and statements knowingly made by a defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, for a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

Acts and statements which are made before the conspiracy began or after it ended are admissible only against the person making them and should not be considered by you against any other defendant.

INSTRUCTION NO. 14

COUNT TWO: ELEMENTS OF THE OFFENSE (MANUFACTURE METHAMPHETAMINE)

The crime of manufacture of methamphetamine, as charged in Count Two of the indictment, has two essential elements, which are:

- 1) The Defendant manufactured methamphetamine; and
- 2) The Defendant did so knowingly and intentionally.

For you to find the Defendant guilty of the crime charged in Count Two, the government must prove these two essential elements beyond a reasonable doubt; otherwise you must find the Defendant not guilty of Count Two.

INSTRUCTION NO. 15

AIDING AND ABETTING

A person may also be found guilty of manufacturing methamphetamine even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of the manufacture of methamphetamine.

In order to have aided and abetted the commission of a crime, a person must, before or at the time the crime was committed:

(1) have known the manufacture of methamphetamine was being committed or going to be committed; and

(2) have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of the manufacture of methamphetamine.

For you to find the defendant guilty of manufacturing methamphetamine by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the essential elements of manufacturing methamphetamine were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NO. 16

COUNT THREE: ELEMENTS OF THE OFFENSE (POSSESSION OF PSEUDOEPHEDRINE
WITH INTENT TO MANUFACTURE METHAMPHETAMINE)

The crime of possession of pseudoephedrine with intent to manufacture methamphetamine, as charged in Count Three of the Indictment, has three essential elements, which are:

- 1) The Defendant was in possession of pseudoephedrine;
- 2) The Defendant knew that he was in possession of pseudoephedrine; and
- 3) The Defendant intended to manufacture methamphetamine with the pseudoephedrine.

For you to find the Defendant guilty of the crime charged in Count Three, the government must prove these three essential elements beyond a reasonable doubt; otherwise you must find the Defendant not guilty of Count Three.

INSTRUCTION NO. 17

COUNT FOUR: ELEMENTS OF THE OFFENSE (ENDANGERING HUMAN LIFE IN THE
MANUFACTURE OF METHAMPHETAMINE)

The crime of endangering human life in the manufacture of methamphetamine, as charged in Count Four of the indictment, has two essential elements, which are:

- 1) The Defendant knowingly and intentionally manufactured or attempted to manufacture methamphetamine; and
- 2) While manufacturing or attempting to manufacture methamphetamine, the Defendant created a substantial risk of harm to human life.

For you to find the Defendant guilty of the crime charged in Count Four, the government must prove these two essential elements beyond a reasonable doubt; otherwise you must find the Defendant not guilty of Count Four.

INSTRUCTION NO. 18

COUNT FIVE: ELEMENTS OF THE OFFENSE (POSSESSION OF FIREARM IN FURTHERANCE OF, OR USING OR CARRYING A FIREARM IN RELATION TO, A DRUG TRAFFICKING CRIME)

The crime of possessing a firearm in furtherance of, or using or carrying a firearm in relation to, a drug trafficking crime, as charged in Count Five of the indictment, has three essential elements, which are:

- 1) The Defendant committed the drug trafficking crimes charged in Counts One or Two, that is conspiracy to manufacture methamphetamine or manufacture of methamphetamine.
- 2) The Defendant knowingly used, carried, or possessed the firearm; and
- 3) The Defendant used or carried the firearm in relation to that offense, or possessed it in furtherance of that offense.

The phrase "used a firearm" means that the firearm was actively employed in the course of the commission of the conspiracy to manufacture methamphetamine or the commission of the manufacture of methamphetamine. You may find that a firearm was used during the commission of the conspiracy, if you find that, in relation to that offense, a conspirator made references to a firearm that was in the Defendant's possession.

You may find that a firearm was "carried" during the commission of the conspiracy to manufacture methamphetamine or the commission of the manufacture of methamphetamine if you find that, in relation to that offense, the Defendant had a firearm on his person or was transporting a firearm in a vehicle.

You may find that a firearm was "possessed in furtherance of" the commission of the conspiracy to manufacture methamphetamine or the commission of the manufacture of

methamphetamine if you find that, in relation to those offenses, the Defendant possessed a firearm with the purpose of furthering the conspiracy to manufacture methamphetamine or the manufacture of methamphetamine.

For you to find the Defendant guilty of the crime charged in Count Five, the government must prove these three essential elements beyond a reasonable doubt; otherwise you must find the Defendant not guilty of Count Five

INSTRUCTION NO. 19

COUNT SEVEN: ELEMENTS OF THE OFFENSE (MANUFACTURE
METHAMPHETAMINE WITHIN 1000 FEET OF A PLAYGROUND)

The crime of manufacture of methamphetamine near a playground, as charged in Count Seven of the Indictment, has three essential elements, which are:

- 1) The Defendant knowingly and intentionally manufactured methamphetamine;
- 2) The Defendant knew he was manufacturing methamphetamine or some other prohibited drug; and
- 3) The Defendant knowingly manufactured methamphetamine within 1000 feet of real property comprising a playground.

For purposes of this instruction, a “playground” means any outdoor facility intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for recreation of children, i.e., playground equipment.

For you to find the Defendant guilty of the crime charged in Count Seven, the government must prove these three essential elements beyond a reasonable doubt; otherwise you must find the Defendant not guilty of Count Seven.

INSTRUCTION NO. 20

COUNT 8: ELEMENTS OF THE OFFENSE (POSSESSION OF METHAMPHETAMINE)

The crime of possession of methamphetamine, as charged in Count Eight of the Indictment, has two essential elements, which are:

- 1) The Defendant was in possession of methamphetamine;
- 2) The Defendant knew he was in possession of methamphetamine.

For you to find the Defendant guilty of the crime charged in Count Eight, the government must prove these two essential elements beyond a reasonable doubt; otherwise you must find the Defendant not guilty of Count Eight.

INSTRUCTION NO. 21

POSSESSION: ACTUAL, CONSTRUCTIVE, SOLE, JOINT

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" has been used in these instructions it includes actual as well as constructive possession and also sole as well as joint possession.

INSTRUCTION NO. 22

PROOF OF INTENT OR KNOWLEDGE

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

INSTRUCTION NO. 23

QUANTITIES OF METHAMPHETAMINE INVOLVED IN THE OFFENSES

As to Counts 1, 2, and 7, the government need only prove a measurable amount of methamphetamine in order for you to find the defendant guilty provided you have found all the elements beyond a reasonable doubt.

If you find the defendant guilty beyond a reasonable doubt under Count 1 and/or Count 2 and/or Count 7, you will then be asked to determine whether the government has proved the amount involved in that particular count beyond a reasonable doubt. Keep in mind that you must consider each count separately.

If you find the defendant guilty under Count 1, you must then determine whether the amount of methamphetamine involved in that count exceeded either 50 grams of actual methamphetamine or 500 grams of a mixture or substance containing a measurable amount of methamphetamine. If you find that the government has proved this amount beyond a reasonable doubt, indicate "yes" on your verdict form on the count you are considering and do not complete the remaining question on the form; otherwise, indicate "no," and then proceed to the remaining question. In that instance, you must then determine whether the amount of methamphetamine involved in that count exceeded either 5 grams of actual methamphetamine or 50 grams of a mixture or substance containing a measurable amount of methamphetamine. If you find that the Government has proved this amount beyond a reasonable doubt, indicate "yes" on your verdict form on the count you are considering; otherwise, indicate "no."

If you find the defendant guilty under either Count 2 and/or Count 7, you must then determine whether the amount of methamphetamine involved in that count exceeded either 5 grams of actual methamphetamine or 50 grams of a mixture or substance containing a

measurable amount of methamphetamine. If you find that the Government has proved this amount beyond a reasonable doubt, indicate "yes" on your verdict form on the count you are considering; otherwise, indicate "no."

In determining the amount of methamphetamine involved in each offense, you may include quantities of methamphetamine which were manufactured in the course of the conspiracy by fellow conspirators only if you find it was reasonably foreseeable to the defendant that such quantities of methamphetamine would be manufactured by his fellow conspirators.

For your information, one ounce equals 28.35 grams, and one pound equals 453.6 grams.

INSTRUCTION NO. 24

EXPERT WITNESSES

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NO. 25

DEMONSTRATIVE SUMMARIES NOT RECEIVED IN EVIDENCE

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the books, records, or other underlying evidence in the case. Those charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the books, records or other underlying evidence.

INSTRUCTION NO. 26

TESTIMONY UNDER GRANT OF IMMUNITY OR PLEA BARGAIN / IMPEACHMENT

You have heard evidence that Robert Craycraft, Larry Boyd, Melissa Fowler, Barbara Horn, and Chastity Sanders have received promises from the government that their testimony will not be used against them in a criminal case. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the government's promise is for you to determine.

You have heard evidence that Robert Craycraft has pleaded guilty to a crime which arose out of the same events for which the defendant is on trial here. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by the plea agreement is for you to determine. The witness's guilty plea cannot be considered by you as any evidence of this defendant's guilt. The witness's guilty plea can be considered by you only for the purpose of determining how much, if at all, to rely upon the witness's testimony.

You have heard testimony from these same witnesses that they participated in criminal activities with the defendant and others. Their testimony was received in evidence and may be considered by you. You may give this testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by their desire to please the government or strike a good bargain with the government about their own situation is for you to determine.

You have heard evidence that each of the foregoing witnesses hopes to receive certain benefits from the government in exchange for their cooperation with the government, including reduced sentences in their own case, recommendations from the government to state and local

prosecuting authorities to treat the witness more leniently in their own case, or the forbearance of the government in not filing federal criminal charges. It is for you to decide whether or not the testimony of each of these witnesses may have been influenced by the witnesses hope of receiving such benefits from the government.

You have also heard evidence that Larry Boyd has entered into a proffer agreement with the government in this case, and is attempting to negotiate a plea agreement in the hope of receiving benefits from the government for what is called "substantial assistance" to the government. In regard to that evidence, I will now explain to you what the sentencing laws of the United States provide.

A defendant's sentence must be within a range established in guidelines written by the United States Sentencing Commission. The guideline range is determined by numerous factors, including the amount of controlled substances for which the defendant is responsible, the role he played in the crime, and his past criminal record, if any. In addition, some defendants are subject to a mandatory minimum sentence by statute, that is, a sentence that the law provides must be of a certain minimum length. A sentence can, however, be reduced below the guideline range and below the mandatory minimum sentence, both at the time the sentence is imposed and again within a year after sentencing, if the prosecutor files a motion with the Court. If the prosecutor handling the witness's case believes the witness has provided substantial assistance, that prosecutor can file, in the Court in which the charges are pending against this witness, a motion to reduce his or her sentence below the guideline range or the statutory mandatory minimum. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide

whether to reduce the sentence at all, and if so, how much to reduce it.

You have also heard evidence that certain of the government's witnesses used or were addicted to drugs or alcohol. You should consider whether the testimony of these witnesses might have been affected by their drug use or alcohol use at the time of the events about which they testified.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight, if any, you think it deserves.

INSTRUCTION NO. 27

REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 28

ELECTION OF A FOREPERSON/DUTY TO DELIBERATE

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict - whether guilty or not guilty - must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the Government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone -

including me - how your votes stand numerically.

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not guilty must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. [The form reads: (read form)]. You will take this form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

5/14/2001

DATE

Robert W. Pratt

ROBERT W. PRATT, JUDGE
UNITED STATES DISTRICT COURT

RWD
JUDGE'S COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

FILED
DES MOINES, IOWA
01 MAY 14 PM 3:45

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD ALLEN ALLEN,

Defendant.

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CRIMINAL NO. 01-39

JURY INSTRUCTIONS

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- 30. Felon in Possession of Firearm: Elements of the Offense

INSTRUCTION NO. 29

INTRODUCTION AND INDICTMENT--COUNT SIX

In this second trial of charges against the defendant, you will decide whether the government has proved beyond a reasonable doubt the charges in Count Six of the Indictment. You will consider all the evidence presented in the first trial and in this second trial, and you will apply all 30 instructions on the law to the facts as you find them to have been established by the evidence, and return your verdict accordingly on Count Six.

Count Six of the Indictment charges that defendant, on or about November 3, 2000, having been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed a firearm in and affecting interstate commerce.

Defendant has pleaded not guilty, which places the burden on the government to prove beyond a reasonable doubt each of the charges against the defendant.

INSTRUCTION NO. 30

FELON IN POSSESSION OF A FIREARM: ELEMENTS OF THE OFFENSE

The crime of being a felon in possession of a firearm, as charged in Count Six, has three essential elements which are:

1. The defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year;
2. The defendant thereafter knowingly possessed a firearm; and
3. The firearm was transported across a state line at some time before the defendant's possession of it.

The government and the defendant have stipulated and agreed that the defendant has been convicted of a crime punishable by imprisonment for more than one year, and you must consider the first essential element proven.

If you have found beyond a reasonable doubt that the firearm in question was manufactured in a state other than Iowa and that the defendant possessed that firearm in Iowa then you may, but are not required to, find that it was transported across a state line.

The term "firearm" means any weapon which will or is designed to, or may be readily converted to expel a projectile by the action of explosion.

5/14/2001

DATE

Robert W. Pratt

ROBERT W. PRATT, JUDGE
UNITED STATES DISTRICT COURT