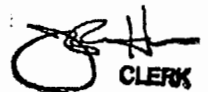


FILED

AUG 29 2013


CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 12-50059-08, 15 &
)	17-JLV
Plaintiff,)	
)	FINAL
vs.)	INSTRUCTIONS
)	TO THE JURY
THERESA VOCU,)	
ZENO LITTLE, and)	
WESLEY YELLOW HORSE, SR.,)	
)	
Defendants.)	

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VERDICT FORMS

FINAL INSTRUCTION NO. 1 - ROLE OF INSTRUCTIONS

Members of the jury, the written instructions I gave you at the beginning of the trial and any oral instructions I gave you during the trial remain in effect. All instructions, whenever given and whether in writing or not, are equally binding on you and must be followed.

The final instructions I am about to give you will be available to you in the jury room. These instructions explain the law that applies to this case. You must consider my instructions as a whole and not single out some instructions and ignore others.

FINAL INSTRUCTION NO. 2 - DUTY OF JURORS

This is a criminal case brought by the United States government against the defendants, Theresa Vocu, Zeno Little, and Wesley Yellow Horse, Sr. In count I, Ms. Vocu is charged with conspiracy to distribute a controlled substance: methamphetamine. In count II, Mr. Little and Mr. Yellow Horse, Sr., are charged with conspiracy to distribute a controlled substance, marijuana. Your duty is to decide from the evidence whether each defendant is not guilty or guilty of the offense charged against him or her. Keep in mind you must give separate consideration to the evidence regarding each individual defendant.

You will find the facts from the evidence presented in court. "Evidence" is defined in Final Instruction No. 12. You are entitled to consider that evidence in light of your own observations and experiences. You may use reason and common sense to draw conclusions from facts established by the evidence. You will then apply the law to the facts to reach your verdicts. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with the law or not.

It is vital to the administration of justice that each of you faithfully perform your duties as jurors. Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts based solely on the evidence, your common sense, and the law as I give it to you. Do not take anything I said or

did during the trial as an indication of what I think about the evidence or what I think your verdict should be. Do not conclude from any ruling or comment I made that I have any opinion on how you should decide the case.

Please remember only Ms. Vocu, Mr. Little, and Mr. Yellow Horse, Sr., not anyone else, are on trial here. Also, remember each defendant is on trial only for the offense charged against him or her, not for anything else.

FINAL INSTRUCTION NO. 3 - PRELIMINARY MATTERS

An offense consists of “elements” which the government must prove beyond a reasonable doubt in order to convict a defendant of an offense charged in the indictment. To help you evaluate the evidence, I will give you the elements that make up the offenses charged. However, I must first explain some preliminary matters.

The charges against the defendants are set out in an indictment. An indictment is simply an accusation. It is not evidence of anything. Ms. Vocu, Mr. Little, and Mr. Yellow Horse, Sr., pled not guilty to the charges brought against them. Therefore, each defendant is presumed to be innocent unless and until the government proves, beyond a reasonable doubt, each element of the offense charged against him or her.

The indictment charges the offenses were committed “on or about” a certain date. The government does not have to prove with certainty the exact date of an offense charged. It is sufficient if the evidence establishes that an offense occurred within a reasonable time of the dates alleged in the indictment. In the next two instructions, I will give you the elements for the offenses charged in the indictment. Keep in mind that each count charges a separate offense. You must consider each count separately and return a separate verdict for each count. Again, keep in mind you must give separate consideration to the evidence regarding each individual defendant.

FINAL INSTRUCTION NO. 4 -

COUNT I: CONSPIRACY TO DISTRIBUTE METHAMPHETAMINE

Count I of the indictment charges that beginning on or about no later than October of 2008, and continuing until on or about May 15, 2012, in the District of South Dakota and elsewhere, the defendant, Theresa Vocu and others, knowingly and intentionally, combined, conspired, confederated or agreed with other persons to distribute methamphetamine, a Schedule II controlled substance.

Elements

For you to find Ms. Vocu guilty of the offense of conspiracy to distribute methamphetamine as charged in count I of the indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that beginning on or about October of 2008 and continuing until on or about May 15, 2012, two or more persons reached an agreement or came to an understanding to distribute methamphetamine;

Methamphetamine is a Schedule II controlled substance.

Two, that Ms. Vocu 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

Three, that at the time Ms. Vocu joined in the agreement or understanding, she knew the purpose of the agreement or understanding.

To find Ms. Vocu guilty of the offense of conspiracy to distribute methamphetamine as charged in count I of the indictment, the government must prove all the essential elements beyond a reasonable doubt. If the government proves all the essential elements beyond a reasonable doubt, you must find Ms. Vocu guilty of the offense. If the government fails to prove any essential element beyond a reasonable doubt, you must find Ms. Vocu not guilty of the offense.

FINAL INSTRUCTION NO. 5 -

COUNT II: CONSPIRACY TO DISTRIBUTE MARIJUANA

Count II of the indictment charges that beginning on or about no later than October of 2008, and continuing until on or about May 15, 2012, in the District of South Dakota and elsewhere, the defendants, Zeno Little and Wesley Yellow Horse, Sr., and others knowingly and intentionally, combined, conspired, confederated or agreed with other persons to distribute marijuana, a Schedule I controlled substance.

Elements

For you to find Mr. Little and Mr. Yellow Horse, Sr., guilty of the offense of conspiracy to distribute marijuana as charged in count II of the indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that beginning on or about October of 2008 and continuing until on or about May 15, 2012, two or more persons reached an agreement or came to an understanding to distribute marijuana;

Marijuana is a Schedule I controlled substance.

Two, that Mr. Little and Mr. Yellow Horse, Sr., 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

Three, that at the time Mr. Little and Mr. Yellow Horse, Sr., joined in the agreement or understanding, they knew the purpose of the agreement or understanding.

To find a defendant guilty of the offense of conspiracy to distribute marijuana as charged in count II of the indictment, the government must prove all the essential elements beyond a reasonable doubt as to that defendant. If the government proves all the essential elements beyond a reasonable doubt as to a defendant, you must find that defendant guilty of the offense. If the government fails to prove any essential element beyond a reasonable doubt as to a defendant, you must find that defendant not guilty of the offense.

**FINAL INSTRUCTION NO. 6 -
CONSPIRACY CONSIDERATIONS**

To find the existence of a “conspiracy” the government must prove two or more persons reached an agreement or understanding to distribute a controlled substance. It makes no difference whether those persons are defendants or named in the indictment.

To assist you in determining whether there was an agreement or understanding to conspire to distribute a controlled substance, which was one of the alleged objectives of the conspiracy, you should consider the elements of a “distribution” offense. The elements of distributing a controlled substance are: (1) a person intentionally distributed a controlled substance to another; and (2) at the time of the distribution, the person knew that what he or she was distributing was a controlled substance. None of the defendants are charged with a distribution offense.

To find a defendant guilty of the “conspiracy” charged against that defendant, you do not have to find the offense of distribution of a controlled substance was actually committed by that defendant or anyone else. It is the agreement to distribute a controlled substance which is illegal, so that agreement is the conduct which has been charged in the indictment and which must be proven beyond a reasonable doubt to establish that defendant’s guilt on a count charged 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 the conspiracy was to be carried out. It is not necessary the members have directly stated between themselves the details or purpose of the conspiracy.

You should understand 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 a defendant 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 a conspiracy does not thereby become a member of that conspiracy. Similarly, the mere knowledge of an illegal act or association by a defendant with an individual engaged in the illegal conduct of a conspiracy is not enough to prove that defendant has joined the conspiracy. A defendant must know of the existence and purpose of the conspiracy. Without such knowledge, a defendant cannot be guilty of conspiracy, even if that defendant’s acts furthered the conspiracy.

On the other hand, a person may join in an agreement or understanding without knowing all the details of the agreement or understanding, and without knowing all the other members of the conspiracy. Further, it is not necessary 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.

In deciding whether a defendant voluntarily and intentionally joined in the agreement, you must consider only evidence of that defendant's own actions and statements. You may not consider actions and statements of others, except to the extent any statement of another describes something which was said or done by a defendant.

Ms. Vocu is charged with being a member of a conspiracy to distribute methamphetamine. Mr. Little and Mr. Yellow Horse, Sr., are charged with being a member of a conspiracy to distribute marijuana. You must determine whether each defendant is not guilty or guilty of being a member of the specific conspiracy related to that defendant.

A defendant may not be found guilty of participating in a conspiracy merely because he or she is standing trial with the other defendants or merely because the government has charged two separate conspiracies involving different defendants. You must weigh the evidence against each defendant separately and only as it relates to the conspiracy with which that defendant is charged.

FINAL INSTRUCTION NO. 7 -

PROOF OF INTENT OR KNOWLEDGE

“Intent” and “knowledge” are elements of the offenses charged in this case and must be proven beyond a reasonable doubt. The government is not required to prove a defendant knew his or her acts or omissions were unlawful. An act is done “knowingly” if a defendant realizes what he or she is doing and does not act through ignorance, mistake, or accident. You may consider the evidence of a defendant’s words, acts, or omissions, along with all other evidence, in deciding whether that defendant acted knowingly.

FINAL INSTRUCTION NO. 8 -

ACTS AND STATEMENTS DURING A CONSPIRACY

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 that defendant even though they were done or made in the absence of and without the knowledge of that defendant. This includes acts done or statements made before the defendant joined in 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.

FINAL INSTRUCTION NO. 9 -

PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The defendants are presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of the defendants or the fact they are here in court. The presumption of innocence remains with the defendants throughout the trial. This presumption alone is sufficient to find the defendants not guilty. The presumption of innocence may be overcome only if the government proves, beyond a reasonable doubt, each essential element of an offense charged.

The burden is always on the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant to prove his or her innocence, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to cross-examine the witnesses called to testify by the government.

Remember, each count charges a separate offense, and you must consider each count separately. If the government proves beyond a reasonable doubt all the essential elements of an offense charged as to a defendant, you must find that defendant guilty of the offense. If the government fails to prove beyond a reasonable doubt any essential element of the offense charged as to a defendant, you must find that defendant not guilty of the offense. Each

defendant is entitled to be treated separately, and you must determine whether the government met its burden of proof as to each defendant separately.

FINAL INSTRUCTION NO. 10 -

DEFENDANTS' RIGHT NOT TO TESTIFY

The fact the defendants did not testify must not be considered by you in any way or even discussed in arriving at your verdict.

FINAL INSTRUCTION NO. 11 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence or lack of evidence produced during trial. 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 must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important affairs of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

FINAL INSTRUCTION NO. 12 - DEFINITION OF EVIDENCE

I mentioned the word "evidence." "Evidence" includes the testimony of witnesses, documents and other things received as exhibits, and stipulated facts. Stipulated facts are facts formally agreed to by the parties. Certain things are *not* evidence. I shall list those things for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence. Opening statements and closing arguments by lawyers are not evidence.
2. Objections and rulings on 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 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.

The fact an exhibit was shown to you does not mean you must rely on it more than you rely on other evidence.

Furthermore, a particular piece of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose and not for any other purpose. I told you when that occurred and

instructed you on the purposes for which the piece of evidence could and could not be used.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

The weight of the evidence is not determined by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the weight of the evidence should not be determined merely by the number or volume of documents or exhibits. The weight of evidence depends on its quality, not quantity. The quality and weight of the evidence are for you to decide.

**FINAL INSTRUCTION NO. 13 -
STATEMENT BY A DEFENDANT**

You have heard testimony a defendant made a statement to others. It is for you to decide:

First, whether the statement was made; and

Second, if so, how much weight you should give the statement.

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

You may consider a defendant's statement only in the case against him or her, and not in the case against any other defendant. You may not consider or discuss a defendant's statement in any way when you are deciding if the government proved, beyond a reasonable doubt, its case against any other defendant.

FINAL INSTRUCTION NO. 14 - 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 says, 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 see or hear the things testified about;
- the witness's memory;
- any motives the witness may have for testifying a certain way;
- the behavior of the witness while testifying;
- whether the witness said something different at an earlier time;
- the witness's drug or alcohol use or addiction, if any;
- 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 people sometimes see or hear things differently and sometimes forget things. You need to consider whether a contradiction results from an innocent misrecollection or sincere lapse of memory or instead from an intentional

falsehood or pretended lapse of memory.

Finally, just because a witness works in law enforcement or is employed by the government does not mean you should give more weight or credibility to the witness's testimony than you give to any other witness's testimony.

FINAL INSTRUCTION NO. 15 - IMPEACHMENT

In the last instruction, I instructed you generally on the credibility of witnesses. I now instruct you further on how the credibility of a witness may be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness’s trial testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and therefore whether they affect the credibility of that witness.

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

FINAL INSTRUCTION NO. 16 - OTHER CONSIDERATIONS

In weighing the evidence, you may also consider the following:

1. You heard evidence some of the witnesses were convicted of crimes. You may use this evidence only to help you decide whether to believe those witness and how much weight to give their testimony, if any.
2. You heard evidence some of the witnesses made plea agreements with the government, received promises they will not be prosecuted further, and received promises their testimony will not be used against them case. The fact some witnesses pled guilty cannot be considered by you as evidence of guilt of any defendant in this trial. Whether that testimony may have been influenced by the plea agreements or by the government's promises is for you to decide. Guilty pleas made by witnesses can be considered by you only for the purpose of determining how much, if at all, to rely upon their testimony. You may give their testimony whatever weight you think it deserves.
3. You heard evidence some of the witnesses hope to receive reduced sentences in return for their cooperation with the government in this case. The court has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, makes a motion. It is up to the court to

decide whether to reduce their sentences at all, and if so, how much to reduce them. Whether the testimony may have been influenced by a hope of receiving a more lenient sentence is for you to decide. You may give their testimony whatever weight you think it deserves.

4. You heard testimony from some witnesses they participated in an offense charged against a defendant. Whether their testimony may have been influenced by a desire to please the government or to strike a good bargain about their own situations is for you to decide. You may give their testimony whatever weight you think it deserves.

5. You heard evidence some witnesses had an arrangement with the government under which they received money and were not prosecuted for a crime in exchange for providing information. Some witnesses testified they believed they were under a grant of immunity and may be testifying in the hope the government will not file charges against them. Whether this testimony was influenced by these benefits is for you to determine. You may give their testimony whatever weight you think it deserves.

FINAL INSTRUCTION NO. 17 - EXPERT WITNESSES

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become an 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.

FINAL INSTRUCTION NO. 18 - OBJECTIONS

The lawyers made objections during the trial that I ruled on. If I sustained an objection to a question before it was answered, do not draw any inferences or conclusions from the question itself. The lawyers had a duty to object to testimony or other evidence they believed was not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer made objections.

FINAL INSTRUCTION NO. 19 - USE OF NOTES

You must make your decision based on the evidence. We have an official court reporter making a record of the trial. However, we will not have a typewritten transcript of the trial available for your use in reaching a verdict. You must pay close attention to the evidence as it is presented.

Notes you took during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

At the end of the trial, you may take your notes out of the notebook and keep them or leave them, and we will destroy them. No one will read the notes.

FINAL INSTRUCTION NO. 20 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. Your verdict as to each defendant must be unanimous. You must return a separate verdict for each defendant. It is your duty to consult with one another and to deliberate with a view of reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself, but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views and change your opinion if you are convinced it is wrong. To bring the jury to a unanimous result, you must examine the questions submitted to you openly and frankly with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish an individual defendant's guilt beyond a reasonable doubt on an offense charged against him or her, then that defendant should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, the verdict of the jury must be not guilty for that defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes an individual defendant's guilt beyond a reasonable doubt on an

offense charged, your vote should be for a verdict of guilty against that defendant on that offense. If all of you reach that conclusion, the verdict of the jury must be guilty for that defendant on that offense. As I instructed you earlier, the burden is on the government to prove beyond a reasonable doubt every essential element of an offense charged. Remember, each defendant is entitled to be treated separately, and you must determine whether the government met its burden of proof as to each defendant separately.

The question before you can never be whether the government wins or loses the case. The government, as well as society, always wins when justice is done, regardless of whether your verdict is not guilty or guilty.

Finally, remember that you are not partisans. You are judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest you carefully consider all of the evidence bearing upon the questions before you. You may take all the time you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict as to a defendant, then that defendant's case is left open and must be resolved at some later time.

FINAL INSTRUCTION NO. 21 -

DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

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

Second, if a defendant is found guilty of an offense, the sentence to be imposed is my responsibility. You may not consider punishment of a defendant in any way in deciding whether the government proved its case beyond a reasonable doubt as to each offense charged in the indictment.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the court security officer, signed by one or more jurors. After conferring with the lawyers, I will respond as soon as possible, either in writing or orally in open court. Remember you should not tell anyone—including me—how your votes stand numerically.


Fourth, your verdict as to each defendant must be based solely on the evidence and on the law in these instructions. **The verdict, whether not guilty or guilty, must be unanimous as to each defendant.** 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 forms are simply the written notice of the decisions

you reach in this case. You will take these forms to the jury room. When you have unanimously agreed on the verdict as to each defendant, the foreperson will fill in each form, date and sign it, and advise the court security officer you have reached a verdict as to each defendant. You will then return to the courtroom where your verdicts will be received and announced.

Dated August 29, 2013.

BY THE COURT:



JEFFREY L. VIKEN
CHIEF JUDGE