UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE BRADLEY,

Defendant.

No. CR 09-50029-02-KES

FINAL INSTRUCTIONS TO THE JURY

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FINAL INSTRUCTION NO. 1 – INTRODUCTION

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

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 – "INTENT" AND "KNOWLEDGE"

"Intent" and "knowledge" are elements of the offenses charged in this case and must be proved beyond a reasonable doubt. The prosecution is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done "knowingly" if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

FINAL INSTRUCTION NO. 3 – COUNT 1 – CONSPIRACY TO DISTRIBUTE COCAINE

Count 1 of the second superseding indictment charges that beginning at a time unknown to the Grand Jury, but no later than October 2005, and continuing through the date of the second superseding indictment, at Rapid City, in the District of South Dakota, and elsewhere, the defendant, Joe Bradley, did knowingly and intentionally combine, conspire, confederate, and agree with others known and unknown to the Grand Jury to knowingly and intentionally distribute and possess with the intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of cocaine, its salts, optical and geometric isomers, and salts of its isomers, a Schedule II controlled substance.

Elements

For you to find Joe Bradley guilty of the "conspiracy" offense charged in **Count 1** of the second superseding indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt.

***One,* that at a time no later than October 2005, and continuing to the date of the second superseding indictment, two or more persons reached an agreement or came to an understanding to possess with the intent to distribute, or to distribute, a mixture or substance containing cocaine;**

> The prosecution must prove that the 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 second superseding 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.

The second superseding indictment charges a conspiracy to commit two separate crimes or offenses, namely possession with intent to distribute cocaine and distribution of cocaine. It is not necessary for the prosecution to prove a conspiracy to commit both of those offenses. It would be sufficient if the prosecution proves, beyond a reasonable doubt, a conspiracy to commit *one* of those offenses; but, in that event, in order to return a verdict of guilty, you must unanimously agree upon *which* of the two offenses was the subject of the conspiracy. If you cannot agree in that manner, you must find the defendant not guilty.

To assist you in determining whether there was an agreement or understanding to possess with the intent to distribute cocaine, which was one of the alleged objectives of the conspiracy, you should consider the elements of a "possession with intent to distribute" offense. The elements of possession with intent to distribute cocaine are the following: (1) a person was in possession of cocaine; (2) the person knew that he was, or intended to be, in possession of a controlled substance; and (3) the person intended to distribute some or all of the cocaine to another person.

To assist you in determining whether there was an agreement or understanding to distribute cocaine, which was the other alleged objective of the conspiracy, you should consider the elements of a "distribution" offense. The elements of distribution of cocaine are the following: (1) a person intentionally transferred cocaine to another; and (2) at the time of the transfer, the person knew that what he was transferring was a controlled substance.

To find the defendant guilty of the "conspiracy" charged in **Count 1** of the second superseding indictment, you do not have to find that the offense of

possession with the intent to distribute cocaine or distribution of cocaine was actually committed by the defendant or anyone else. It is the agreement to distribute or to possess with the intent to distribute cocaine that is illegal, so that is the conduct that has been charged in **Count 1**, and what must be proved to establish the defendant's guilt on that charge.

***Two*, that Joe Bradley 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;**

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. 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 a person has joined the conspiracy. A relationship between a buyer and a seller of drugs does not alone establish a conspiracy.

On the other hand, 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.

In deciding whether the defendant voluntarily and intentionally joined in the agreement, you must

> consider only evidence of his 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 has been said or done by the defendant.

***And three*, that at the time Joe Bradley joined in the agreement or understanding, he knew the purpose of the agreement or understanding.**

For you to find the defendant guilty of "conspiracy," as charged in **Count 1** of the second superseding indictment, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find him not guilty of the "conspiracy" charge.

Quantity of cocaine

If you find the defendant guilty of the "conspiracy" offense alleged in the second superseding indictment, you must also determine beyond a reasonable doubt the quantity of cocaine involved in the conspiracy for which the defendant can be held responsible. The prosecution does not have to prove that the offense involved the amount or quantity of cocaine charged in the second superseding indictment, although the prosecution must prove beyond a reasonable doubt the quantity of cocaine actually involved in the offense for which the defendant can be held responsible. Therefore, you must ascertain whether or not the controlled substance in question was in fact cocaine, as charged in the second superseding indictment, and you must determine beyond a reasonable doubt the amount of the cocaine involved in the offense for which the defendant can be held responsible. In so doing, you may consider all of the evidence in the case that may aid in the determination of these issues.

A defendant guilty of conspiracy to distribute cocaine, as charged in the second superseding indictment, is responsible for quantities of cocaine that he actually distributed or agreed to distribute. Such a defendant is also

responsible for those quantities of cocaine that fellow conspirators distributed or agreed to distribute, if you find that the defendant could have reasonably foreseen, at the time he joined the conspiracy or while the conspiracy lasted, that those prohibited acts were a necessary or natural consequence of the conspiracy.

The defendant is not held responsible for any quantity of cocaine involved in the conspiracy after he or she withdraws from it. In order for you to find that a person withdrew from a conspiracy, you must find that person took a definite, positive step to disavow or defeat the purpose of the conspiracy. Merely stopping activities or a period of inactivity is not enough.

You must determine the *total quantity* of the controlled substance involved in the conspiracy for which the defendant can be held responsible. You must indicate the *range* within which that *total quantity* falls. You must determine that *total quantity* in terms of grams of a mixture or substance containing a detectable amount of cocaine. In making your determination of quantity as required, it may be helpful to remember that one pound is equal to 453.6 grams, that one ounce is equal to 28.35 grams, and that one kilogram is equal to 1000 grams.

Again, you must determine *beyond a reasonable doubt* the quantity of cocaine involved in the conspiracy for which the defendant can be held responsible.

FINAL INSTRUCTION NO. 4 –
ACTS AND STATEMENTS OF CO-CONSPIRATORS

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.

FINAL INSTRUCTION NO. 5 – COUNT 4 – DISTRIBUTION OF COCAINE

Count 4 of the second superseding indictment charges that on or about August 2008, at Rapid City, in the District of South Dakota, the defendant, Joe Bradley, did knowingly and intentionally distribute cocaine, its salts, optical and geometric isomers, and salts of its isomers, a Schedule II controlled substance.

Elements

For you to find Joe Bradley guilty of "distribution," as charged in **Count 4** of the second superseding indictment, the prosecution must prove each of the following two essential elements beyond a reasonable doubt.

***One*, that on or about August 2008, Joe Bradley intentionally transferred cocaine to another person;**

***And two*, at the time of the transfer, Joe Bradley knew that what he was transferring was a controlled substance.**

For you to find the defendant guilty of "distribution" as charged in **Count 4** of the second superseding indictment, the prosecution must prove both of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

FINAL INSTRUCTION NO. 6 – IMPEACHMENT

In Preliminary Instruction No. 7, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can 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 present 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.

You have heard evidence that Lindsey Potratz, a/k/a Nate Tchida, Alana Shelton, and Michael Wiseley have been convicted of a crime. You may use that evidence only to help you decide whether or not to believe these witnesses and how much weight to give their testimony.

Similarly, you have heard evidence that Lindsey Potratz, a/k/a Nate Tchida, has pleaded guilty to charges that are alleged to have arisen out of the same events for which the defendant is now on trial. You cannot consider such a witness's guilty plea as any evidence of the guilt of the defendant. Rather, you can consider such a witness's guilty plea only for the purpose of determining how much, if at all, to rely upon his testimony.

You should treat the testimony of certain witnesses with greater caution and care than that of other witnesses:

1. You have heard testimony from Lindsey Potratz, a/k/a Nate Tchida, and Alana Shelton stating that they participated in the crime charged against the defendant. 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 be influenced by their desire to please the Government or to strike a good bargain with the Government about their own situations is for you to determine.

2. You have heard evidence that Lindsey Potratz, a/k/a Nate Tchida, and Michael Wiseley are testifying with the hope of receiving a reduction in their sentences in return for their cooperation with the Government in this case. If the prosecutor handling such a witness's case believes the witness has provided "substantial assistance," the prosecutor can file a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for such a witness for substantial assistance unless the U.S. Attorney files a motion requesting such a reduction. If the motion for reduction of sentence for substantial assistance is filed by the U.S. Attorney, then it is up to the judge to decide whether to reduce the sentence of that witness at all, and if so, how much to reduce it. You may give the testimony of such witnesses such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by the witness's hope of receiving a reduction in sentence is for you to decide.

3. You have also heard evidence that Alana Shelton testified in the hope that the government will not file further charges against her. Her testimony was received in evidence and you may consider it. You may give her testimony such weight as you think it deserves. Whether or not her testimony may have been influenced by her hope that the Government will not file charges against her is for you to determine.

If you believe that 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. 7 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

Joe Bradley is 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 defendant or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find the defendant not guilty. The presumption of innocence may be overcome only if the prosecution proves, beyond a reasonable doubt, each element of a crime charged against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. Therefore, the fact that the defendant did not testify must not be discussed or considered by you in any way when deliberating and arriving at your verdict. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution.

Unless the prosecution proves beyond a reasonable doubt that Joe Bradley has committed each and every element of an offense charged in the second superseding indictment against him, you must find him not guilty of that offense.

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

FINAL INSTRUCTION NO. 8 – REASONABLE DOUBT

A reasonable doubt may arise from the evidence or lack of evidence produced by the prosecution. 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 in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

FINAL INSTRUCTION NO. 9 – DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. Your verdict as to the defendant must be unanimous. It is your duty to consult with one another and to deliberate with a view to 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 to change your opinion if you are convinced it is wrong. To bring twelve minds to an 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 the defendant's guilt beyond a reasonable doubt on an offense charged against him, then the defendant should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on an offense charged, then your vote should be for a verdict of guilty against the defendant on that charge, and if all of you reach that conclusion, then the verdict of the jury must be guilty for the defendant on that charge. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of a crime charged.

Remember also that the question before you can never be whether the government wins or loses the case. The government, as well as society, always

wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—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 that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that 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, the case is left open and must be disposed of at some later time.

FINAL INSTRUCTION NO. 10 – 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. That person will preside over your discussions and speak for you here in court.

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

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, 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.**

Fourth, your verdict must be based solely on the evidence and on the law in these instructions. **The verdict, whether not guilty or 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. You will take this form to the jury room, and when each of you has agreed on the verdict, 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.

Dated April 8, 2010.

Karen E. Schreier
Chief Judge