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**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LONA LEE COLHOFF,

Defendant.

No. CR 14-50050-03-KES

**FINAL
INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

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 – CONSPIRACY TO DISTRIBUTE COCAINE

For you to find Lona Lee Colhoff guilty of the “conspiracy” offense charged in Count I of the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, beginning at a time unknown but no later than on or about 2005, and continuing to on or about the date of this Indictment, two or more persons reached an agreement or came to an understanding to distribute or possess with the intent to distribute a mixture or substance containing a detectable amount of Cocaine, its salts, optical and geometric isomers, and salts of isomers;

A conspiracy is an agreement of two or more persons to commit one or more crimes. It makes no difference whether any co-conspirators are defendants or named in the Superseding Indictment. For this element to be proved,

- Colhoff may have been, but did not have to be, one of the original conspirators
- The crime that the conspirators agreed to commit did not actually have to be committed
- The agreement did not have to be written or formal
- The agreement did not have to involve every detail of the conspiracy
- The conspirators did not have to personally benefit from the conspiracy

The Superseding Indictment charges a conspiracy to commit two separate crimes: distribution of cocaine and possession of cocaine with the intent to distribute. For you to find that the government has proved a conspiracy, you must unanimously find that there was an agreement to act for at least one of these purposes. You must unanimously agree which purpose or purposes motivated the members of the agreement to act. If you are unable to unanimously agree on at least one of these purposes, you cannot find the defendant guilty of conspiracy.

To help you decide whether the defendant agreed to commit the crime of distribution of cocaine, you should consider the elements

of a “distribution” offense. The elements of distribution of cocaine are the following:

- *One*, that a person intentionally transferred a mixture or substance containing cocaine to another;
- *And two*, that at the time of the transfer, the person knew that what he was transferring was a controlled substance.

Remember that the prosecution does not have to prove that distribution of cocaine actually occurred for this element of the “conspiracy” offense to be proved.

To help you decide whether the defendant agreed to commit the crime of possession of cocaine with the intent to distribute, you should consider the elements of a “possession” offense. The elements of possession of cocaine with the intent to distribute are the following:

- *One*, that a person was in possession of cocaine;
- *Two*, the person knew that he was, or intended to be, in possession of a controlled substance;
- *And three*, the person intended to distribute some or all of the cocaine to another person.

Remember that the prosecution does not have to prove that possession of cocaine with the intent to distribute actually occurred for this element of the “conspiracy” offense to be proved.

Two, that 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;

Colhoff must have joined in the agreement, but she may have done so at any time during its existence. Colhoff may have joined the agreement even if she agreed to play only a minor role in it.

Colhoff did not have to do any of the following to join the agreement:

- join the agreement at the same time as all the other conspirators

- know all of the details of the conspiracy, such as the names, identities, or locations of all the other members, or
- conspire with every other member of the conspiracy

On the other hand, each of the following, alone, is not enough to show that Colhoff joined the agreement:

- evidence that a person was merely present at the scene of an event
- evidence that a person merely acted in the same way as others
- evidence that a person merely associated with others
- evidence that a person was friends with or met socially with individuals involved in the conspiracy
- evidence that a person who had no knowledge of a conspiracy acted in a way that advanced an objective of the conspiracy
- evidence that a person merely knew of the existence of a conspiracy
- evidence that a person merely knew that an objective of the conspiracy was being considered or attempted, or
- evidence that a person merely approved of the objectives of the conspiracy

Rather, the prosecution must prove that Colhoff had some degree of knowing involvement in the conspiracy.

In deciding whether an alleged conspiracy existed, you may consider the acts and statements of each person alleged to be part of the agreement. In deciding whether the defendant joined the agreement, you may consider only the acts and statement of the defendant.

And three, that at the time the defendant joined in the agreement or understanding, she knew the purpose of the agreement or understanding.

A person knows the purpose of the agreement if she is aware of the agreement and does not participate in it

through ignorance, mistake, carelessness, negligence, or accident. It is seldom, if ever, possible to determine directly what was in the defendant's mind. Thus the defendant's knowledge of the agreement and its purpose can be proved like anything else, from reasonable conclusions drawn from the evidence.

It is not enough that the defendant and other alleged participants in the agreement to commit the crimes of distribution of cocaine or possession of cocaine with the intent to distribute simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. The defendant must have known of the existence and purpose of the agreement. Without such knowledge, the defendant cannot be guilty of conspiracy, even if her acts furthered the conspiracy.

For you to find the defendant guilty, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the offense charged in Count I of the Superseding Indictment.

FINAL INSTRUCTION NO. 3 – CONSPIRACY TO DISTRIBUTE MARIHUANA

For you to find Lona Lee Colhoff guilty of the “conspiracy” offense charged in Count II of the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, beginning at a time unknown but no later than on or about 2008, and continuing to on or about the date of this Indictment, two or more persons reached an agreement or came to an understanding to distribute or possess with the intent to distribute marihuana;

A conspiracy is an agreement of two or more persons to commit one or more crimes. It makes no difference whether any co-conspirators are defendants or named in the Superseding Indictment. For this element to be proved,

- Colhoff may have been, but did not have to be, one of the original conspirators
- The crime that the conspirators agreed to commit did not actually have to be committed
- The agreement did not have to be written or formal
- The agreement did not have to involve every detail of the conspiracy
- The conspirators did not have to personally benefit from the conspiracy

The Superseding Indictment charges a conspiracy to commit two separate crimes: distribution of marihuana and possession of marihuana with the intent to distribute. For you to find that the government has proved a conspiracy, you must unanimously find that there was an agreement to act for at least one of these purposes. You must unanimously agree which purpose or purposes motivated the members of the agreement to act. If you are unable to unanimously agree on at least one of these purposes, you cannot find the defendant guilty of conspiracy.

To help you decide whether the defendant agreed to commit the crime of distribution of marihuana, you should consider the elements of a “distribution” offense. The elements of distribution of marihuana are the following:

- *One*, that a person intentionally transferred marihuana to another;
- *And two*, that at the time of the transfer, the person knew that what he was transferring was a controlled substance.

Remember that the prosecution does not have to prove that distribution of marihuana actually occurred for this element of the “conspiracy” offense to be proved.

To help you decide whether the defendant agreed to commit the crime of possession of marihuana with the intent to distribute, you should consider the elements of a “possession” offense. The elements of possession of marihuana with the intent to distribute are the following:

- *One*, that a person was in possession of marihuana;
- *Two*, the person knew that he was, or intended to be, in possession of a controlled substance;
- *And three*, the person intended to distribute some or all of the marihuana to another person.

Remember that the prosecution does not have to prove that possession of marihuana with the intent to distribute actually occurred for this element of the “conspiracy” offense to be proved.

Two, that 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;

Colhoff must have joined in the agreement, but she may have done so at any time during its existence. Colhoff may have joined the agreement even if she agreed to play only a minor role in it.

Colhoff did not have to do any of the following to join the agreement:

- join the agreement at the same time as all the other conspirators
- know all of the details of the conspiracy, such as the names, identities, or locations of all the other members, or

- conspire with every other member of the conspiracy

On the other hand, each of the following, alone, is not enough to show that Colhoff joined the agreement:

- evidence that a person was merely present at the scene of an event
- evidence that a person merely acted in the same way as others
- evidence that a person merely associated with others
- evidence that a person was friends with or met socially with individuals involved in the conspiracy
- evidence that a person who had no knowledge of a conspiracy acted in a way that advanced an objective of the conspiracy
- evidence that a person merely knew of the existence of a conspiracy
- evidence that a person merely knew that an objective of the conspiracy was being considered or attempted, or
- evidence that a person merely approved of the objectives of the conspiracy

Rather, the prosecution must prove that Colhoff had some degree of knowing involvement in the conspiracy.

In deciding whether an alleged conspiracy existed, you may consider the acts and statements of each person alleged to be part of the agreement. In deciding whether the defendant joined the agreement, you may consider only the acts and statement of the defendant.

And three, that at the time the defendant joined in the agreement or understanding, she knew the purpose of the agreement or understanding.

A person knows the purpose of the agreement if she is aware of the agreement and does not participate in it through ignorance, mistake, carelessness, negligence, or accident. It is seldom, if ever, possible to determine

directly what was in the defendant's mind. Thus the defendant's knowledge of the agreement and its purpose can be proved like anything else, from reasonable conclusions drawn from the evidence.

It is not enough that the defendant and other alleged participants in the agreement to commit the crimes of distribution of marihuana or possession of marihuana with the intent to distribute simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. The defendant must have known of the existence and purpose of the agreement. Without such knowledge, the defendant cannot be guilty of conspiracy, even if her acts furthered the conspiracy.

For you to find the defendant guilty, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the offense charged in Count II of the Superseding Indictment.

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

If you determine that an agreement existed and the defendant joined the agreement, then you may consider acts knowingly done and statements knowingly made by the 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 that defendant. This includes acts done or statements made before that 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 person.

FINAL INSTRUCTION NO. 5 – ATTEMPTED WITNESS TAMPERING

For you to find Lona Lee Colhoff guilty of the offense charged in Count III of the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, that Colhoff knowingly used, or knowingly attempted to use, intimidation, threats, or corrupt persuasion against Brady Ferguson;

To “intimidate” someone means intentionally to say or do something that would cause a person of ordinary sensibilities to be fearful of harm to himself or another. It is not necessary for the prosecution to prove that Brady Ferguson was actually frightened.

To corruptly persuade someone means to persuade with consciousness of wrongdoing.

And two, that Colhoff did so with the intent to influence, delay, or prevent the testimony of Brady Ferguson in the criminal trial of *United States v. Susan Marie Schrader*, Case No. 14-50049-01-KES, in the United States District Court for the District of South Dakota.

To act with “intent to influence” the testimony of a person means to act for the purpose of getting the person to change or color or shade his or her testimony in some way. It is not necessary for the prosecution to prove that the person’s testimony was, in fact, changed in any way.

For you to find the defendant guilty, the prosecution must prove both of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the offense charged in Count III of the Superseding Indictment.

FINAL INSTRUCTION NO. 6 – IMPEACHMENT

In Preliminary Instruction No. 6, 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 has said or done something, or has 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 witnesses Patrick Brewer, Scott Burleson, Brady Ferguson, Twila LeBeau, Casey Merrill, and Kateri Patton have each 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 Patrick Brewer and Twila LeBeau have pleaded guilty to a charge that arose out of the same events for which this defendant is now on trial. You cannot consider such a witness’s guilty plea as any evidence of the guilt of this 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 or her testimony.

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

1. You have heard evidence that Patrick Brewer and Twila LeBeau are testifying pursuant to plea agreements and hope to receive reductions 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 United States Attorney files a motion requesting such a reduction. If the motion for reduction of sentence for substantial assistance is filed by the United States 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.

2. You have also heard testimony from Pam Dereu that she participated in the crime charged against this defendant. Her testimony was received in evidence and you may consider it. You may give the testimony of such a witness such weight as you think it deserves. Whether or not the testimony of such a witness may have been influenced by her desire to please the government or to strike a good bargain with the government about her own situation is for you to determine.

3. You have heard evidence that the witnesses Patrick Brewer and Twila LeBeau have made plea agreements with the Government. You have also heard evidence that witnesses Casey Merrill and Kateri Patton hope that they will not be prosecuted. Their testimony was received in evidence and may be considered by you. You may give the testimony of such a witness such weight as you think it deserves. Whether or not the testimony of such a witness may have been influenced by the Government's promise 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

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that she is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of an offense charged against her.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove her innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.
- This burden means that you must find the defendant not guilty of an offense charged against her, unless the prosecution proves beyond a reasonable doubt that she has committed each and every element of that offense.

FINAL INSTRUCTION NO. 8 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 9 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all of the evidence bearing on each element before you.
- Take all the time that you feel is necessary.

- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

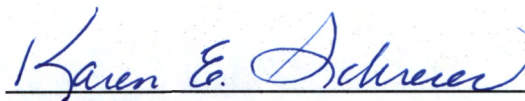
FINAL INSTRUCTION NO. 10 – DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty, I will decide what her sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to her race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated April 9, 2015.

A handwritten signature in blue ink that reads "Karen E. Schreier". The signature is written in a cursive style and is positioned above a horizontal line.

Karen E. Schreier
United States District Judge