IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	**)**	
	)	
v.	**)**	**No. 05 CR 471**
	)	
ANTHONY HARDMON	**)**	

INSTRUCTIONS GIVEN TO THE JURY

Date: November 17, 2006

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that a person would have given certain testimony.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness' intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness' memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

Some of you have heard the phrases "circumstantial evidence" and "direct evidence." Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of series of facts which tend to show another fact in issue. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

Certain things are not evidence. I will list them for you:

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

It is proper for an attorney to interview any witness in preparation for trial.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

The indictment in this case is the formal method of accusing the defendant of offenses and placing the defendant on trial. It is not evidence against the defendant and does not create any inference of guilt.

Count One of the indictment charges the defendant with the crime of conspiracy to distribute and to possess with intent to distribute controlled substances. The defendant is also charged in Counts Fifty-One and Fifty-Two with using a telephone to facilitate a drug conspiracy.

The defendant has pleaded not guilty to the charges.

The defendant is presumed to be innocent of each of the charges. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

The defendant has an absolute right not to testify. The fact that the defendant did not testify should not be considered by you in any way in arriving at your verdict.

You have received evidence of a statement said to be made by the defendant to law enforcement officers. You must decide whether the defendant did in fact make the statement. If you find that the defendant did make the statement, then you must decide what weight, if any, you feel the statement deserves. In making this decision, you should consider all the matters in evidence having to do with the statement, including those concerning the defendant himself and the circumstances under which the statement was made.

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness' qualifications, and all of the other evidence in the case.

You have heard evidence that before the trial a witness made statements that may be inconsistent with the witness' testimony here in court. If you find that it is inconsistent, you may consider the earlier statement only in deciding the truthfulness and accuracy of the witness' testimony in this trial. You may not use it as evidence of the truth of the matters contained in that prior statement. If that statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement.

You have heard evidence that Anthony Sutton has been convicted of crimes. You may consider this evidence only in deciding if his testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

You have heard testimony from Anthony Sutton, who:

- received benefits from the government in connection with this case, namely a recommendation for a reduced sentence; and
- has pleaded guilty to an offense arising out of the same occurrence for which the defendant is now on trial. This guilty plea is not to be considered as evidence against the defendant.

You may give Anthony Sutton's testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

The indictment charges that offenses were committed "on or about" a certain date. The government must prove that the offenses happened reasonably close to that date but is not required to prove that the alleged offenses happened on that exact date.

You have heard recorded conversations. These recorded conversations were legally intercepted by the government. These recorded conversations are proper evidence and you may consider them, just as any other evidence.

When the recordings were played during the trial, you were furnished transcripts of the recorded conversations.

The recordings are the evidence, and the transcripts were provided to you only as a guide to help you follow as you listen to the recordings. The transcripts are not evidence of what was actually said or who said it. It is up to you to decide whether the transcripts correctly reflect what was said and who said it. If you noticed any difference between what you heard on the recordings and what you read in the transcripts, you must rely on what you heard, not what you read. And if after careful listening, you could not hear or understand certain parts of the recordings, you must ignore the transcripts as far as those parts are concerned.

I am providing you with the recordings and a player. You are not required to play the recordings, in part or in whole. You may rely, instead, on your recollections of these recordings as you heard them at trial. If you do decide to listen to recording or recordings and wish to have the transcript(s) corresponding to the recording(s), ask the Marshal in writing and the transcript(s) will be given to you. You may chose to listen to the recording(s) without the transcript(s).

When the word “knowingly” is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident. Knowledge may be proved by the defendant's conduct, and by all the facts and circumstances surrounding the case.

A conspiracy is an agreement between two or more persons to accomplish an unlawful purpose. To sustain the charge of conspiracy charged in Count One, the government must prove:

First, that the conspiracy as charged in Count One existed, and

Second, that the defendant knowingly became a member of the conspiracy with an intention to further the conspiracy.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of Count One.

If, on the other hand, you find from your consideration of all of the evidence that one of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of Count One.

A conspiracy may be established even if its purpose was not accomplished.

It is not necessary that all of the acts charged in Count One of the indictment be proved, so long as the government has proven the elements of conspiracy as I have described them to you beyond a reasonable doubt.

To be a member of the conspiracy, the defendant need not join at the beginning or know all the other members or the means by which its purpose was to be accomplished. The government need not prove that the defendant knew all the details or the conspiracy, participated in all of the events of the conspiracy, or played more than a minor role in the conspiracy. The government must prove beyond a reasonable doubt that the defendant was aware of the common purpose and was a willing participant.

In deciding whether the defendant joined the charged conspiracy, you must base your decision only on what the defendant did or said. In determining what the defendant did or said, you may consider the defendant's own words or acts. You may also consider the words or acts of other persons to decide what the defendant did or said, and you may use them to help you understand what the defendant did or said.

A conspiracy need not consist of a formal agreement. The existence of an agreement may be inferred from the circumstances and the conduct of the alleged participants.

The existence of a simple buyer-seller relationship between a defendant and another person, without more, is not sufficient to establish the existence of a conspiracy, even where the buyer intends to resell controlled substances. The fact that the defendant may have bought controlled substances from another person or sold controlled substances to another person is not sufficient without more to establish that the defendant was a member of the charged conspiracy.

In considering whether a conspiracy or a simple buyer-seller relationship existed, you should consider all of the evidence, including the following factors:

(1) Whether the transactions involved large quantities of controlled substances;

(2) Whether the parties had a standardized way of doing business over time;

(3) Whether the sales were on credit or on consignment;

(4) Whether the parties had a continuing relationship;

(5) Whether the seller had a financial stake in a resale by the buyer;

(6) Whether the parties had an understanding that the controlled substances would be resold.

The presence of one or more of these factors may be indicative of the existence of a conspiracy; the absence of one or more of these factors may be indicative of the existence of a simple buyer-seller relationship.

No single factor necessarily indicates by itself that the defendant was or was not engaged in a conspiracy or a simple buyer-seller relationship.

If you find that the government has proved beyond a reasonable doubt that there was one overall conspiracy as alleged in Count One and that the defendant knowingly became a member of that conspiracy, you should find that defendant guilty of Count One. If you find that there were two or more conspiracies and that the defendant knowingly became a member of one or more of these conspiracies, you may find that defendant guilty of Count One only if you further find that this proven conspiracy was included within the conspiracy alleged in Count One. If, on the other hand, the proven conspiracy is not included within the conspiracy alleged in Count One, you should find the defendant not guilty of Count One.

For the defendant to be found guilty as charged in Count 1, the government does not have to prove that the charged conspiracy actually involved a specific amount of controlled substances. The government must prove, however, that the conspiracy involved a measurable amount of a controlled substance.

If, however, you find the defendant guilty as charged in Count 1, you will be required to determine separately the quantity of controlled substances that you find the government has proven. I will address this further when I discuss the verdict form with you.

It does not matter whether the defendant knew that the substance was cocaine or cocaine base in the form of crack cocaine. It is sufficient that the defendant knew that the substance was some kind of prohibited drug.

You are instructed that mixtures containing cocaine and cocaine base in the form of crack cocaine are controlled substances.

Possession of an object is the ability to control it. Possession may exist even when a person is not in physical contact with the object, but knowingly has the power and intention to exercise direction or control over it, either directly or through others.

It is possible for more than one person to possess an object as I have defined that term. If you find that a particular person had possession of an object, the fact that others may have also possessed it or had access to it is of no consequence.

Distribution is the transfer of possession from one person to another.

Intent to distribute can be inferred from the possession of a quantity of drugs larger than needed for personal use. Whether to draw such an inference is up to you.

A defendant charged with conspiracy can be convicted, in the alternative, as an aider and abettor of that conspiracy.

A defendant is guilty of aiding and abetting a charged conspiracy if the government proves beyond a reasonable doubt that the defendant tried to help the conspiracy succeed by committing an act in furtherance of the conspiracy and had knowledge of the conspiracy's purpose at the time he committed the act. A person can aid and abet a conspiracy without necessarily participating in the original agreement.

To sustain the charges in Counts Fifty-One and Fifty-Two that the defendant used or caused to be used, a telephone to facilitate a violation of the narcotics laws, the government must prove each of the following propositions beyond a reasonable doubt as to the particular Count you are considering:

First, the defendant you are considering used a telephone;

Second, the telephone was used to commit, or to cause or facilitate the committing of, the offense of conspiracy to possess with intent to distribute and to distribute a controlled substance, as charged in Count One on the indictment; and

Third, the defendant acted knowingly or intentionally.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find that defendant guilty of that charge.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find that defendant not guilty of that charge.

A call facilitates the committing of an offense if it makes that offense easier, or if it assists in the committing of the offense.

Each count of the indictment charges the defendant with having committed a separate offense.

You must give separate consideration to each count. You must consider each count and the evidence relating to it separate and apart from every other count.

You should return a separate verdict as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision under any other count.

You should not speculate why any other person whose name you may have heard during the trial is not currently on trial before you.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court. A form of verdict has been prepared for you. [Read the verdict form.] Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the form, and each of you will sign it.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.