



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 and the exhibits admitted in evidence.

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's intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness's 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 a series of facts which tend to show another fact that is at 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. You should consider all the evidence in the case, including the circumstantial evidence, 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 be disregarded.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

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.

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 an offense and placing the defendant on trial. It is not evidence against the defendant and does not create any inference of guilt.

Henry Trinidad has been charged in Count One of the second superseding indictment with aiding and abetting the knowing and intentional possession with intent to distribute approximately five kilograms of mixtures containing cocaine, a Schedule II narcotic drug controlled substance. He has also been charged in Counts Two, Three, Four and Five with knowingly and intentionally using a communication facility, namely a telephone, in committing felony narcotics violation. The defendant has pleaded not guilty to the charges against him.

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 heard reputation and opinion testimony evidence about the defendant's character for law-abidingness. You should consider character evidence together with and in the same way as all the other evidence in the case.

You have heard testimony of an identification of a person. Identification testimony is an expression of belief or impression by the witness. You should consider whether, or to what extent, the witness had the ability and the opportunity to observe the person at the time of the offense and to make a reliable identification later. You should also consider the circumstances under which the witness later made the identification.

The government has the burden of proving beyond a reasonable doubt that the defendant was the person who committed the crime charged.

You have heard a witness 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.

Among the exhibits admitted during the trial were recordings that contained conversations in the Spanish language. You were also provided with English transcripts of those conversations. The transcripts were provided to you by the government so that you could consider the content of the conversations on the recordings.

Whether a transcript accurately identifies the persons who are speaking is an issue for you to decide. In considering whether a transcript accurately identifies the persons who were speaking, you should consider all of the evidence regarding how the speakers on the recordings were identified.

In considering whether a transcript accurately describes the meaning of a conversation, you should consider the testimony presented to you regarding how, and by whom, the transcript was made. You may consider the knowledge, training, and experience of the translator, as well as the nature of the conversation and the reasonableness of the translation in light of all the evidence in the case. You should not rely in any way on any knowledge you may have of the language spoken on the recording; your consideration of the transcripts should be based on the evidence introduced in the trial.

Each count of the indictment charges that the offense was committed "on or about" a particular date and time. The government must prove that the offense happened reasonably close to that time but is not required to prove that the alleged offense happened at that exact time.



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.

To sustain the charge against defendant Henry Trinidad in Count One of the second superseding indictment, the government must prove the following propositions:

First, that the defendant knowingly or intentionally possessed cocaine;

Second, that the defendant possessed cocaine with the intent to distribute it to another person.

The government must prove, by direct or circumstantial evidence, that the substance was cocaine. It does not matter, however, whether the defendant knew the substance was cocaine, so long as the government proves that the defendant knew that it was some kind of prohibited drug.

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

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

Any person who knowingly aids, counsels, commands, induces or procures the commission of an offense may be found guilty of that offense. That person must knowingly associate with the criminal activity, participate in the activity, and try to make it succeed.

To sustain the charge in Count One, the government does not have to prove that the charged offense actually involved, or that the defendant possessed, the amount of cocaine alleged in the indictment. The government must prove that the defendant possessed a measurable amount of cocaine.

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 and control over it, either directly or through others.

To distribute something means to transfer possession from one person to another.

You are instructed that cocaine is a controlled substance.

To sustain each of the charges in Counts Two, Three, Four and Five, 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 each count:

First, the defendant used a telephone at or about the date and time alleged in the particular count;

Second, that the defendant used the telephone in committing, or to cause or facilitate the commission of, possession of cocaine with intent to distribute it;

Third, that the defendant did so knowingly; and

Fourth, that a violation of the narcotics laws, namely the violation alleged in Count One, actually took place.

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

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 as to the count you are considering, then you should find the defendant not guilty of the charge in that count.



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

A defendant's presence at the scene of a crime and knowledge that a crime is being committed is not alone sufficient to establish the defendant's guilt.

If a defendant performed acts that advanced a criminal activity but had no knowledge that a crime was being committed or was about to be committed, those acts alone are not sufficient to establish the defendant's guilt.

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.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate 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.



Date: \_\_\_\_\_