IN THE UNITED STATES DISTRICT COURTS

FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, )

)

Plaintiff, )

v. )

)

JAKTINE ALPHONSO MOORE, ) also known as "Jak", and ) JOBITA WILLETTAAVERY, )

)

Defendants. )

4:09CR3091

FINAL JURY INSTRUCTIONS

**INSTRUCTION NO. 1**

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

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

**INSTRUCTION NO.2**

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

**INSTRUCTION NO. 3**

You are reminded that you are not to engage in any independent investigation of this case. For instance, do not conduct research on the Internet about this case or about anyone involved with it, and do not consult a dictionary.

**INSTRUCTION NO. 4**

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

During this trial I may have occasionally asked questions of witnesses in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions related.

**INSTRUCTION NO. 5**

You have heard evidence that certain witnesses have been convicted of a felony, or a crime of dishonesty, or a crime of giving false information. You should consider this evidence, along with other pertinent evidence, in deciding whether or not to believe such a witness and how much weight to give to the testimony of that witness.

**INSTRUCTION NO. 6**

You have heard testimony from persons who have abused drugs. In evaluating the testimony of such a witness you should consider this evidence, along with other pertinent evidence, in deciding whether or not to believe such a witness and how much weight to give to the testimony of that witness.

**INSTRUCTION NO. 7**

You have heard evidence that certain witnesses have not been prosecuted or hope to receive a reduced sentence on criminal charges pending against them in return for their cooperation with the government in this case.

You have also heard that certain witnesses are subject to a mandatory minimum sentence, that is, a sentence that the law provides must be of a certain minimum length. If the prosecutor handling this witness's case believes he provided substantial assistance, that prosecutor can file in the court in which the charges are pending against this witness a motion to reduce his sentence below the statutory minimum. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

You may give the testimony of such a witness such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by his agreement with the government is for you to decide. You should, however, consider the testimony of such a witness with greater caution and care than that of an ordinary witness.

**INSTRUCTION NO. 8**

You have heard evidence that one or more witnesses have pleaded guilty to a crime which arose out of the same events for which the defendant is on trial here. You must not consider such a guilty plea as any evidence of this defendant's guilt. You may consider such a guilty plea only for the purpose of determining how much, if at all, to rely upon a witness's testimony.

**INSTRUCTION NO. 9**

The indictment in this case charges that the defendants committed the crime of conspiracy to distribute and possess with intent to distribute Schedule II controlled substances, namely, cocaine base, also known as "crack cocaine", and cocaine.

The defendants have each pleaded not guilty to this charge.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, each defendant is presumed to be innocent. Thus each defendant, even though charged, begins the trial with no evidence against him or her. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

Keep in mind that you must give separate consideration to the evidence about each individual defendant. Each defendant is entitled to be treated separately, and you must return a separate verdict for each defendant.

There is no burden upon a defendant to prove that he or she is innocent. Accordingly, the fact that a defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

**INSTRUCTION NO. 10**

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. Proofbeyond 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. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

**INSTRUCTION NO. 11**

The crime of conspiracy as charged in Count I of the indictment has three essential elements, which are:

**One:** From an unknown date but at least as early as April 1, 2005, up to and including October 31, 2008, in the District ofNebraska, the defendant and one or more persons reached an agreement or came to an understanding to distribute and possess with intent to distribute a mixture or substance containing a detectable amount of cocaine base (i.e., "crack cocaine"), a Schedule II controlled substance, or cocaine, a Schedule II controlled substance, or both of these controlled substances; **Two:** 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; and

**Three:** At the time the defendant joined in the agreement or understanding, he or she knew the purpose of the agreement or understanding.

For you to find the defendant guilty of this crime the government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty.

**INSTRUCTION NO. 12**

If, but only if, you find the defendant guilty of the crime of conspiracy as charged in Count I of the indictment, then you must also find beyond a reasonable doubt the total quantities of: (a) any mixture or substance containing a detectable amount of cocaine base, also known as "crack cocaine", a Schedule II controlled substance, that was involved in the conspiracy; and (b) any mixture or substance containing cocaine, its salts, optical and geometric isomers, and salts of its isomers, a Schedule II controlled substance, was involved in the conspiracy. You must record your findings on the verdict form by checking the appropriate weight range.

In making these findings, you may only count quantities while the defendant was a member of the conspiracy. With this limitation in mind, you may count: (a) all quantities with which the defendant was directly involved that were within the scope of the conspiracy; and (b) all quantities reasonably foreseeable to the defendant that were within the scope of the conspiracy.

"Reasonably foreseeable" means that the quantity of the controlled substance could have been reasonably anticipated by the defendant as a necessary or natural consequence of the conspiracy. In examining this question, you may consider, among other things, the nature and extent of the defendant's commitment to the conspiracy and the extent to which the defendant benefitted, if at all, from the distribution of the controlled substance by other members of the conspiracy.

**INSTRUCTION NO. 13**

With regard to Count I, the government contends that the members of the conspiracy included the defendants and one or more of the following individuals: Dangelo Erving, Cedric Bluford (Lil Ced), Tyreece Jsames (Sauce), Jonair Moore (Spade), Marcus Bridges, Matthew Gentry, LeSavior Jordan, Anthony Larkin, Daniel Robinson, Willie Sturgis, Stevie Williams, Johnny, Amina Hayes, Butchie, K-9, and John Sutton.

Their "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.

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.

But 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 determining whether the alleged conspiracy existed you may consider the actions and statements of all the alleged participants. The agreement may be inferred from all the circumstances and the conduct of the alleged participants. In determining whether the defendant became a member of the conspiracy you may consider only the acts and statements of that particular defendant.

**INSTRUCTION NO. 14**

With regard to Count I, it is not necessary for the government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

**INSTRUCTION NO. 15**

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

**INSTRUCTION NO. 16**

Your verdict must be agreed to by all twelve of you, that is, it must be unanimous.

**INSTRUCTIONN0.17**

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

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, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement ifyou can do so without violence to individual judgment, because a verdict- whether guilty or not guilty - must be unammous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

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

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the courtroom deputy, signed by one or more jurors.

You may summon the courtroom deputy by using the telephone in the jury room to call my chambers at the number provided by the courtroom deputy. The caller should clearly identify himself or herself as a member of the jury so that my staff will react accordingly. I will respond to your communication 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.

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not 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 ofyou has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise my chambers staff by telephone that you are ready to return to the courtroom.

This being a criminal case, you will not hereafter be allowed to separate until your deliberations have been completed, except for meals and night's rest. If you do not agree upon a verdict by five o'clock p.m. on any given day, you may separate and return for deliberation at nine o'clock a.m. on the next business day. If you desire to deliberate after 5:00 p.m. you may do so, but please notify my staff in advance by using the telephone in the jury room to call my chambers at the number provided by the courtroom deputy. Please also notify my chambers staff by telephone whenever you separate during the day or at the end of the day.

Please be admonished that if you separate at any time during your deliberations, you are, during any such separation, not to talk to anyone about this case or to talk between yourselves about this case. All your deliberations should be conducted as a group in the confines of the jury room. Please also remember and follow all of the other admonitions I have given you throughout this trial for your conduct during recesses. All such instructions also continue to apply during any

separations which may occur after you commence deliberations.

BY THE COURT:

'2010.

Richard G. Kopf

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, )

)

Plaintiff, )

v. )

)

JAKTINE ALPHONSO MOORE, ) also known as "Jak", and ) JOBITA WILLETIAAVERY, )

)

Defendants. )

VERDICT

4:09CR3091

VERDICT FORM

1. Defendant Jaktine Alphonso Moore, a/k/a Jak

COUNT I- Conspiracy

Find one of the following:

(Place an "X" beside one, but only one, of the two statements)

A. We find the Defendant Jaktine Alphonso Moore, a/k/a Jak, guilty beyond a reasonable doubt of conspiracy to distribute and possess with intent to distribute a Schedule II controlled substance.

B. We find the Defendant Moore not guilty of conspiracy to distribute and possess with intent to distribute a Schedule II controlled substance.

Quantity of Crack Cocaine

If, but only if, you have found the Defendant Moore guilty of conspiracy as charged in Count I, make the following finding with respect to such charge:

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Verdict Form Page 2

(Place an "X" beside one, but only one, of the four weight choices)

We find unanimously beyond a reasonable doubt that the Defendant Moore is responsible for and the conspiracy, as it pertained to the Defendant Moore, involved the following quantity of a mixture or substance containing a detectable amount of cocaine base, also known as "crack cocaine", a Schedule II controlled substance:

a. SO grams or more.

b. S grams or more, but less than SO grams.

c. Less than 5 grams, but more than none.

d. None.

Quantity of Cocaine

If, but only if, you have found the Defendant Moore guilty of conspiracy as charged in Count I, make the following finding with respect to such charge:

(Place an "X" beside one, but only one, of the three weight choices)

We find unanimously beyond a reasonable doubt that the Defendant Moore is responsible for and the conspiracy, as it pertained to the Defendant Moore, involved the following quantity 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:

a. SOO grams or more.

b. less than 500 grams, but more than none.

c. None.

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2. Defendant Jobita Willetta Avery

COUNT I-Conspiracy

Find one of the following:

(Place an "X" beside one, but only one, of the two statements)

A. We find the Defendant Jobita Willetta Avery guilty beyond a reasonable doubt of conspiracy to distribute and possess with intent to distribute a Schedule II controlled substance.

B. We find the Defendant Avery not guilty of conspiracy to distribute and possess with intent to distribute a Schedule II controlled substance.

Quantity of Crack Cocaine

If, but only if, you have found the Defendant Avery guilty of conspiracy as charged in Count I, make the following finding with respect to such charge:

(Place an "X" beside one, but only one, of the four weight choices)

We find unanimously beyond a reasonable doubt that the Defendant Avery is responsible for and the conspiracy, as it pertained to the Defendant Avery, involved the following quantity of a mixture or substance containing a detectable amount of cocaine base, also known as "crack cocaine", a Schedule II controlled substance:

a. 50 grams or more.

b. 5 grams or more, but less than 50 grams.

c. Less than 5 grams, but more than none.

d. None.

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Verdict Form Page 4

Quantity of Cocaine

If, but only if, you have found the Defendant Avery guilty of conspiracy as charged in Count I, make the following finding with respect to such charge:

(Place an "X" beside one, but only one, of the three weight choices)

We find unanimously beyond a reasonable doubt that the Defendant Avery is responsible for and the conspiracy, as it pertained to the Defendant Avery, involved the following quantity 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:

|  |  |  |
| --- | --- | --- |
|  | a. | 500 grams or more. |
|  | b. | less than 500 grams but more than none. |
|  | c. | None. |

EXECUTION OF VERDICT FORM

The Foreperson shall sign and date the verdict form, and such signature shall mean that the verdict of the jury was unanimous.

DATED this day of 2010.

FOREPERSON