IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CASE NO. 8:08CR326
	)	
Plaintiff,	)	
	)	
vs.	)	COURT'S CHARGE
	)	TO THE JURY
JESUS A. IXTA-SALAZAR,	)	
	)	
Defendant.	)	

INSTRUCTION NO. 1

INTRODUCTION

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 of or 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

DUTY

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

NO INVESTIGATION

You are reminded that you are not to engage in any independent investigation of this case. For instance, you are not to consult a dictionary or any other like reference.

INSTRUCTION NO. 4

JUDGE – NO OPINION

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.

INSTRUCTION NO. 5

PRESUMPTION OF INNOCENCE

The law presumes the Defendant innocent. The Defendant has no burden to prove that he is innocent. Therefore, even though the Defendant is charged, the trial begins with no evidence against him.

INSTRUCTION NO. 6

DESCRIPTION OF CHARGES; INDICTMENT NOT EVIDENCE; PRESUMPTION OF INNOCENCE; BURDEN OF PROOF

The Indictment in this case charges the Defendant with two different crimes. Under Count I, the Indictment charges that the Defendant committed the crime of conspiracy to distribute and possess with intent to distribute methamphetamine.

Under Count III, the Indictment charges that the Defendant possessed a firearm while he was an illegal alien. The Defendant has pleaded not guilty to each of those charges.

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, the Defendant is presumed to be innocent. Thus, the Defendant, even though charged, begins the trial with no evidence against him. 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 each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

INSTRUCTION NO. 7

COUNT I: ELEMENTS OF OFFENSE; BURDEN OF PROOF

The crime of conspiracy to distribute or possess with intent to distribute a substance containing a detectable amount of methamphetamine, 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 August 2005, up to and including May 2008, two or more persons reached an agreement or came to an understanding to distribute or possess with intent to distribute a mixture or substance containing a detectable amount of methamphetamine;

TWO: The Defendant, Jesus A. Ixta-Salazar, 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, Jesus A. Ixta-Salazar, joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

If the government has proved all of these essential elements beyond a reasonable doubt as to the Defendant, Jesus A. Ixta-Salazar, then you must find the Defendant, Jesus A. Ixta-Salazar, guilty of the crime charged under Count I of the Indictment. Otherwise, you must find the Defendant, Jesus A. Ixta-Salazar, not guilty of the crime charged in Count I of the Indictment.

If you find that the government has proved the three essential elements of the offense, you must determine the quantity of controlled substances attributable to the Defendant, Jesus A. Ixta-Salazar, within the ranges specified in the verdict form.

INSTRUCTION NO. 8

QUANTITY

The quantity of controlled substances involved in any agreement or understanding includes the controlled substances the Defendant possessed for personal use or distributed or agreed to distribute. The quantity also includes the controlled substances fellow conspirators distributed or agreed to distribute, if you find that those distributions or agreements to distribute were a necessary or natural consequence of the agreement or understanding and were reasonably foreseeable by the Defendant.

To assist you in determining quantity**,** you are advised that the following weight measurements are equivalent:

1 oz (ounce) = 28.35 gm (grams)

1 lb (pound) = 453.6 gm (grams)

1 lb (pound) = 0.4536 kg (kilograms)

1 kg (kilogram) = 1,000 gm (grams)

1 gm (gram) = 1,000 mg (milligrams).

INSTRUCTION NO. 9

CONSPIRACY: “AGREEMENT” EXPLAINED

The government 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 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.

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.

You must decide, after considering all of the evidence, whether the conspiracy alleged in Count I of the Indictment existed. If you find that the alleged conspiracy did exist,

you must also decide whether the Defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the Defendant's 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 had been said or done by the Defendant.

INSTRUCTION NO. 10

CONSPIRACY: SUCCESS IMMATERIAL

It is not necessary for the government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

INSTRUCTION NO. 11

CONSPIRACY: SUBSTANTIVE OFFENSE: ELEMENTS

To assist you in determining whether there was an agreement or understanding to distribute methamphetamine, you are advised that the elements of the crime of distribution of methamphetamine are:

ONE: A person intentionally transferred methamphetamine to another person; and

TWO: At the time of the transfer, the person making the transfer knew that it was a controlled substance.

To assist you in determining whether there was an agreement or understanding to possess methamphetamine with intent to distribute, you are further advised that the elements of the crime of possession of methamphetamine with intent to distribute are:

ONE: A person was in possession of methamphetamine;

TWO: This person knew that he or she was in possession of a controlled substance; and

THREE: This person intended to distribute some or all of the methamphetamine to someone else.

Keep in mind that Count I of the Indictment charges a *conspiracy* to commit the crime of distribution or possession with intent to distribute methamphetamine and not the crime of either the distribution of, or possession with intent to, distribute methamphetamine.

INSTRUCTION NO. 12

5.06F CONSPIRACY: MULTIPLE OFFENSES

Count I of the Indictment charges a conspiracy to commit two separate crimes or offenses. It is not necessary for the government to prove a conspiracy to commit *both* of those offenses. It would be sufficient if the government 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.

INSTRUCTION NO. 13

CONSPIRACY: CO-CONSPIRATOR ACTS AND STATEMENTS

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.

INSTRUCTION NO. 14

COUNT III: ELEMENTS OF OFFENSE; BURDEN OF PROOF

The crime of being an illegal alien in possession of a firearm, as charged in Count III of the Indictment, has three essential elements, which are:

ONE: On or about May 27, 2008, the Defendant, Jesus A. Ixta-Salazar, knowingly possessed a firearm, a Ruger .45 caliber pistol, serial no. 664-07781;

TWO: When he possessed the firearm, he was an alien illegally or unlawfully in the United States; and

THREE: The firearm was transported across a state line at some time during or before his possession of it.

You are instructed that the government and the Defendant stipulated that the Defendant possessed a firearm, a Ruger .45 caliber pistol, serial no. 664-07781, in Bellevue, Nebraska, on May 27, 2008. The term "firearm" means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive. In this case, the government and the Defendant also stipulated that the Ruger .45 caliber pistol, serial no. 664-07781, is a firearm under federal law. Therefore, you must consider the first element as proven.

You are also instructed that the government and the Defendant stipulated, that is, agreed, that the defendant was in the United States illegally on May 27, 2008. Therefore, you must consider the second element as proven.

You are also instructed that the government and the Defendant stipulated that the firearm was transported in interstate commerce. Therefore, you must consider the third essential element as proven.

If the government has proved all of these essential elements beyond a reasonable doubt as to the Defendant, Jesus A. Ixta-Salazar, then you must find the Defendant, Jesus A. Ixta-Salazar, guilty of the crime charged under Count III of the Indictment. Otherwise, you must find the Defendant, Jesus A. Ixta-Salazar, not guilty of the crime charged in Count III of the Indictment.

INSTRUCTION NO. 15

POSSESSION

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" has been used in these instructions it includes actual as well as constructive possession and also sole as well as joint possession.

INSTRUCTION NO. 16

INTENT OR KNOWLEDGE

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 the 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. 17

REASONABLE DOUBT

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

INSTRUCTION NO. 18

EVIDENCE

I have mentioned the word "evidence." The "evidence" in this case consists of the testimony of witnesses, the documents and other things received as exhibits, the facts that have been stipulated -- that is, formally agreed to by the parties, and any facts that have been judicially noticed -- that is, facts which I say you may, but are not required to, accept as true, even without evidence.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

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

4. Anything you saw or heard about this case outside the courtroom is not evidence, unless I specifically told you otherwise during the trial.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I have told you if that occurred, and I have instructed you on the purposes for which the item could and could not be used.

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 19

CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the Defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 20

EXPERT TESTIMONY

You have heard testimony from a person described as an expert. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NO. 21

CREDIBILITY - COOPERATING WITNESSES

You have heard evidence that certain witnesses hope to receive a reduced sentence in their own criminal cases in return for their cooperation with the government in this case. These witnesses each entered into an agreement with the United States Attorney's Office which provides that, in return for substantial assistance, the government may request that their sentences be lowered. If the prosecutor handling a witness's case believes the witness provided substantial assistance, that prosecutor can file a motion to reduce the witness's sentence. 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 a cooperating witness such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by the hope of receiving a reduced sentence is for you to decide.

INSTRUCTION NO. 22

IMPEACHMENT OF WITNESS: PRIOR CONVICTION

You have heard evidence that certain witnesses were each once convicted of one or more crimes. You may use that evidence only to help you decide whether to believe the witness and how much weight to give the witness's testimony.

INSTRUCTION NO. 23

TESTIMONY OF INFORMER

You have heard evidence that the witness, Frederick Herron, had an arrangement with the Government under which he was paid money for providing information to the Government. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his information or testimony may have been influenced by such payments is for you to determine.

INSTRUCTION NO. 24

NOTES

Some of you may have taken notes during the trial; others of you may have chosen not to take notes. If you did take notes, remember that these notes are not themselves evidence, but are instead merely memory aids. You must reach a verdict based upon your independent recollection of the evidence presented during the trial, not upon your notes or another juror's notes. Notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

INSTRUCTION NO. 25

“UNANIMOUS” DEFINED

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

INSTRUCTION NO. 26

EXHIBITS

Exhibits have been admitted into evidence and are to be considered along with all the other evidence to assist you in reaching a verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned, along with your verdict, in the same condition as it was when received by you.

INSTRUCTION NO. 27

ELECTION OF FOREPERSON; DUTY TO DELIBERATE

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 if you can do so without violence to individual judgment, because a verdict - whether guilty or not guilty - must be unanimous.

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 signed on the reverse side by one or more jurors. You may send a note to me through the Marshal, or call my chambers at tel. 661-7323 to locate the courtroom deputy. I will respond to the note 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 the verdict 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 call my chambers at 661-7323 and tell whoever answers the telephone that you have a verdict.