

and proceeding toward the exit of the train station. Detective [REDACTED] and another officer approached Mr. [REDACTED] and requested permission to speak to him. After engaging Mr. [REDACTED] in conversation, a request was made of Mr. [REDACTED] that he be searched for drugs and weapons. Mr. [REDACTED] consented and a search was conducted which revealed no controlled substances or weapons. He was allowed to leave at that time.

Detective [REDACTED] was contacted by another officer who requested him to assist him at another location in the Amtrak Station. Co-defendant, [REDACTED] [REDACTED] was observed at a telephone booth acting very nervous and appearing lost. Ms. [REDACTED] was approached by officers and requested to allow her purse to be searched. Ms. [REDACTED] refused initially but consented to having her purse sniffed by a canine. While the canine was en route, Ms. [REDACTED] indicated that her purse did contain drugs and further indicated that the drugs belonged to the person who had just been stopped by the officers (the defendant, [REDACTED]). On the back of her ticket, Ms. [REDACTED] had an address and telephone number written. Detective [REDACTED] of the Durham Police Department telephoned the number on the back of Ms. [REDACTED] ticket and pretended to be Ms. [REDACTED]. As a result of the telephone conversation which ensued, Detective [REDACTED] proceeded to [REDACTED] where she was met by a subject known as [REDACTED]. Ms. [REDACTED] indicated to Detective [REDACTED] that she was the person that Detective [REDACTED] was to meet. Ms. [REDACTED] was arrested and subsequently interviewed, during which time she gave a statement indicating that she was familiar with drug activities at the address of 143-L Commerce Street and the defendant's

role in such drug activities.

Based on the statements of Ms. [REDACTED] Detective [REDACTED] and another officer proceeded to search for Mr. [REDACTED] Mr. [REDACTED] was observed walking with another black male in the direction of the Durham Amtrak Station. Mr. [REDACTED] and the other subject were both taken to the Durham Police Department where Mr. [REDACTED] was arrested charged with possession with intent to distribute the drugs found in the possession of Ms. [REDACTED] The other subject was identified as [REDACTED] [REDACTED] and released after questioning.

Evidentiary Issues: In the event the defendant elects to testify, the question arises as to whether evidence of any prior convictions can be used to impeach his credibility as a witness. Upon information and belief, Mr. [REDACTED] has been convicted of felony robbery in the first degree and felony robbery in the second degree (both in 1986), felony criminal possession of a weapon, second degree (1985), and misdemeanor possession of burglary tools (1991). All of the convictions occurred in the state of New York.

Rule 609 of the Federal Rules of Evidence states the following with respect of impeachment by evidence of conviction of crime:

For the purpose of attacking the credibility of a witness, (1) evidence that the witness other than an accused has been convicted of a crime shall be admitted subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and (2) evidence that any witness has been convicted of a crime shall be admitted if it

involved dishonesty or false statement,
regardless of the punishment.

The defendant contends that the prejudicial effect of allowing the government to use his prior convictions to impeach his credibility as a witness would far outweigh any probative value of admitting such evidence. None of the crimes for which defendant has been convicted are similar to the present charge on trial.

In determining probative value and prejudice, the trial judge should consider the following factors:

- 1) Impeachment value of the prior convictions;
- 2) Proximity in time and witnesses subsequent history;
- 3) Similarity between the past crime and the crime charged;
- 4) Importance of testimony;
- 5) Centrality of the credibility issue.

The testimony of the defendant in this action could be crucial to his defense. The prospect of having his prior criminal record placed before the jury could likely adversely affect the defendant's decision of whether to testify at trial. While the defendant's convictions for robbery and felony possession of a weapon are certainly within the ten year time period provided by Rule 609, they are nevertheless remote and dissimilar to the present charge. Such convictions would have no bearing on whether or not the defendant is guilty of the present charge or whether his testimony was truthful. The prejudicial effect of allowing the government to question the defendant regarding such convictions would clearly outweigh any probative value of admission of such convictions.

The government has provided defendant notice of its intent to offer evidence of "crack" cocaine transactions between defendant [REDACTED] and [REDACTED] [REDACTED] within the months of January and February, 1994, at [REDACTED] North Carolina. The government's response to defendant's request for notice of its intent to use Rule 404(b) evidence does not include any other evidence of such nature which the government intends to offer in its case-in-chief. Defendant would object to any attempt by the government to introduce the Rule 404(b) evidence contained in its response or any other similar type evidence which it might desire to offer.

Defendant is unable to identify at this time any additional evidentiary issues which might arise during the course of the trial of this action.

Respectfully submitted this the ____ day of May, 1994.

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DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 1

POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE - 1a (21 U.S.C. 841)

Elements of the Offense

In order to prove this charge against [REDACTED] the government must establish, beyond a reasonable doubt, each of the following three elements of the crime:

1. That [REDACTED] possessed a controlled substance;
2. That [REDACTED] knew that he possessed a controlled substance;
and
3. That [REDACTED] either actually distributed the drugs or intended to distribute the drugs.

Authority

Fifth Circuit: United States v. Freeze, 707 F.2d 132 (5th Cir. 1983); United States v. Verqera, 687 F.2d 57 (5th Cir. 1982).

1 L. Sand, et al., Modern Federal Jury Instructions - Instruction #56-2

First Element--Possession of a Controlled Substance - 1b

The first thing you must determine is whether Mr. [REDACTED] possessed "crack" cocaine. That is, the government must prove that the material that [REDACTED] is charged with possessing or distributing is, in fact, "crack" cocaine. The government may prove this through either direct evidence or through circumstantial evidence. An example of direct evidence is the testimony of a chemist who has done a chemical analysis of the material. Circumstantial evidence would be evidence from which you could infer that the material was "crack" cocaine, such as testimony concerning the names used by the defendant to refer to the material or testimony about the material's appearance. Whether the government relies on direct or circumstantial evidence to prove that the material in issue was "crack" cocaine, it must prove so beyond a reasonable doubt.

Authority

Fifth Circuit: United States v. Crisp, 563 F.2d 1242 (5th Cir. 1977).

1 L. Sand, et al., Modern Federal Jury Instructions - Instruction #56-3

First Element--Definition of Possession - 1c

As I have instructed you, you must find that the defendant "possessed" the drugs. The legal concept of possession may differ from the everyday usage of the term, so I will explain it in some detail.

Actual possession is what most of us think of as possession; that is having physical custody or control of an object. For example, if you find that the defendant had the drugs on his person, you may find that he had possession of the drugs. However, a person need not have actual physical custody of an object in order to be in legal possession of it. If an individual has the ability to exercise substantial control over an object that he does not have in his physical custody, then he is in possession of that item. An example of this from everyday experience would be a person's possession of items he keeps in the safe deposit box of his bank. Although the person does not have physical custody of those items, he exercises substantial control over them and so has what is known as constructive possession of them.

Possession of drugs cannot be found solely on the ground that the defendant was near or close to the drugs. Nor can it be found simply because the defendant was present at a scene where drugs were involved, or solely because the defendant associated with a person who does control the drugs or the property where they are found. However, these factors may be considered by you, in connection with all other evidence, in making your decision whether the defendant possessed the drugs.

Authority

District of Columbia Circuit: United States v. Raper, 676 F.2d 841 (D.C. Cir. 1981).

Third Circuit: United States v. Davis, 562 F.2d 1026 (3d Cir. 1972).

Fourth Circuit: United States v. Zandi, 769 F.2d 229 (4th Cir. 1985).

Fifth Circuit: United States v. Cardenas, 748 F.2d 1015 (5th Cir. 1984); United States v. Freeze, 707 F.2d 132 (5th Cir. 1983); United States v. Vergera, 687 F.2d 57 (5th Cir. 1982).

Seventh Circuit: United States v. White, 660 F.2d 1178 (7th Cir. 1981).

Ninth Circuit: United States v. Batimaria, 623 F.2d 1366 (9th Cir. 1980).

Tenth Circuit: Amaya v. United States, 373 F.2d 197 (10th Cir. 1967).

1 L. Sand, et al., Modern Federal Jury Instructions - Instruction #56-5

Second Element -- Knowledge That the Drugs Were Controlled Substances - 1d

If you find that the defendant possessed a controlled substance, you must then determine whether the defendant knew that he possessed a controlled substance. The government must prove, beyond a reasonable doubt, that the defendant knew that he possessed a controlled substance, and that his possession was not due to carelessness, negligence or mistake. If you find that the defendant did not know that he had a controlled substance in his possession, or that he didn't know that what he possessed was, in fact, a controlled substance, then you must find Mr. [REDACTED] not guilty.

Although the government must prove that the defendant knew that he possessed a controlled substance, the government does not have to prove that the defendant knew the exact nature of the drugs in his possession. It is enough that the government proves that the defendant knew that he possessed some kind of controlled substance.

Authority

First Circuit: United States v. Kairouz, 751 F.2d 467 (1st Cir. 1985).

Second Circuit: United States v. Morales, 577 F.2d 769 (2d Cir. 1978).

Fifth Circuit: United States v. Freeze, 707 F.2d 132 (5th Cir. 1983).

Ninth Circuit: United States v. Jewell, 532 F.2d 697 (9th Cir.), cert. denied, 426 U.S. 951 (1976).

1 L. Sand, et al., Modern Federal Jury Instructions - Instruction #56-8

Third Element--Distribution or Intent To Distribute - 1e

If you find that the defendant knowingly possessed controlled substances, then you must decide whether the defendant either (a) distributed the controlled substances or (b) intended to distribute them. In order to prove the defendant is guilty, the government must prove one of these circumstances beyond a reasonable doubt. It need not prove both.

Authority

Fourth Circuit: Manley v. United States, 588 F.2d 79 (4th Cir. 1978).

Fifth Circuit: United States v. Hernandez, 591 F.2d 1019 (5th Cir. 1979).

Sixth Circuit: United States v. Stevens, 521 F.2d 334 (6th Cir. 1975).

Seventh Circuit: United States v. Orzechowski, 547 F.2d 978 (7th Cir. 1976).

Ninth Circuit: United States v. Oropeza, 564 F.2d 316 (9th Cir.), cert. denied, 434 U.S. 1080 (1977).

1 L. Sand, et al., Modern Federal Jury Instructions - Instruction #56-11

Third Element--Definition of Distribution - 1f

The word "distribute" means to deliver a controlled substance. "Deliver" is defined as the actual, constructive or attempted transfer of a controlled substance. Simply stated, the words distribute and deliver mean to pass on, or to hand over to another, or to cause to be passed on, or handed over to another, or to try to pass on or hand over to another, controlled substances.

[For example, if A tells or orders B to hand over the drugs to C, then A has caused the drugs to be handed over, and therefore has distributed them.]

Distribution does not require a sale. Activities in furtherance of the ultimate sale, such as vouching for the quality of the drugs, negotiating for or receiving the price, and supplying or delivering the drugs may constitute distribution. In short, distribution requires a concrete involvement in the transfer of the drugs.

Authority

Second Circuit: United States v. Masullo, 489 F.2d 217 (2d Cir. 1973).

Fourth Circuit: United States v. Snow, 537 F.2d 1166 (4th Cir. 1976).

Fifth Circuit: United States v. Wilson, 657 F.2d 755 (5th Cir. 1981).

Eighth Circuit: United States v. Pruitt, 487 F.2d 1241 (8th Cir. 1973).

Tenth Circuit: United States v. Wigley, 627 F.2d 224 (10th Cir. 1980).

¹ L. Sand, et al., Modern Federal Jury Instructions - Instruction #56-12

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 2

AIDING AND ABETTING - 2 (18 U.S.C. 2)

Under the aiding and abetting statute, it is not necessary for the government to show that a defendant himself physically committed the crime with which he is charged in order for you to find the defendant guilty.

A person who aids or abets another to commit an offense is just as guilty of that offense as if he committed it himself.

Accordingly, you may find a defendant guilty of the offense charged if you find beyond a reasonable doubt that the government has proved that another person actually committed the offense with which the defendant is charged, and that the defendant aided or abetted that person in the commission of the offense.

As you can see, the first requirement is that you find that another person has committed the crime charged. Obviously, no one can be convicted of aiding or abetting the criminal acts of another if no crime was committed by the other person in the first place. But if you do find that a crime was committed, then you must consider whether the defendant aided or abetted the commission of the crime.

In order to aid or abet another to commit a crime, it is necessary that the defendant willfully and knowingly associate himself in some way with the crime, and that he willfully and knowingly seek by some act to help make the crime succeed.

Participation in a crime is willful if action is taken voluntarily and intentionally, or, in the case of a failure to act, with the

specific intent to fail to do something the law requires to be done; that is to say, with a bad purpose either to disobey or to disregard the law.

The mere presence of a defendant where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or the mere acquiescence by a defendant in the criminal conduct of others, even with guilty knowledge, is not sufficient to establish aiding and abetting. An aider and abettor must have some interest in the criminal venture.

To determine whether a defendant aided or abetted the commission of the crime with which he is charged, ask yourself these questions:

Did he participate in the crime charged as something he wished to bring about?

Did he associate himself with the criminal venture knowingly and willfully?

Did he seek by his actions to make the criminal venture succeed?

If he did, then the defendant is an aider and abettor, and therefore guilty of the offense.

If, on the other hand, your answers to this series of questions are "no," then Mr. Hamilton is not an aider and abettor, and you must find John Doe not guilty.

Authority

United States Supreme Court: Nye & Nissen v. United States, 336 U.S. 613, 69 S. Ct. 766, 93 L. Ed. 919 (1949).
District of Columbia Circuit: United States v. Garrett, 720 F.2d 705, 712-14 (D.C. Cir. 1983).
First Circuit: United States v. Hyson, 721 F.2d 856, 862 (1st Cir.

1983); United States v. Ouejada-Zurique, 708 F.2d 857 (1st Cir. 1983); United States v. Morris, 700 F.2d 427 (1st Cir. 1983); United States v. Southard, 700 F.2d 1, 19-22 (1st Cir. 1983); United States v. Previte, 648 F.2d 73, 81-82 (1st Cir. 1981); United States v. Francomano, 554 F.2d 483 (1st Cir. 1977).

Second Circuit: United States v. Goldberg, 756 F.2d 949, 957-58 (2d Cir. 1985); United States v. Sliker, 751 F.2d 477, 494 (2d Cir. 1984); United States v. Pedroza, 750 F.2d 187, 198 (2d Cir. 1984); United States v. DeFiore, 720 F.2d 757, 763-64 (2d Cir. 1983); United States v. Mayo, 705 F.2d 62, 72 (2d Cir. 1983); United States v. Carson, 702 F.2d 351 (2d Cir. 1983); United States v. Stanchich, 550 F.2d 1294 (2d Cir. 1977).

Third Circuit: United States v. Bey, 736 F.2d 891, 895-96 (3d Cir. 1984).

Fourth Circuit: United States v. Ray, 650 F.2d 252 (4th Cir. 1982).

Fifth Circuit: United States v. McLean, 738 F.2d 655, 659 n.9 (5th Cir. 1984); United States v. Farid, 733 F.2d 1318 (8th Cir. 1984); United States v. Walker, 621 F.2d 163 (5th Cir. 1980).

Sixth Circuit: United States v. Aarons, 718 F.2d 188, 192 (6th Cir. 1983).

Seventh Circuit: United States v. Ambrose, 740 F.2d 505 (7th Cir. 1984); United States v. Pope, 739 F.2d 289 (7th Cir. 1984).

Eighth Circuit: United States v. Netz, 758 F.2d 1308, 1311 (8th Cir. 1985).

Ninth Circuit: United States v. Wellington, 754 F.2d 1457 1464 (9th Cir. 1985); United States v. Mehrmanesh, 689 F.2d 822, 835 (9th Cir. 1982); United States v. Upshaw, 685 F.2d 1202, 1204 (9th Cir. 1982); United States v. Marshall, 532 F.2d 1279 (9th Cir. 1976).

Tenth Circuit: United States v. Goldstein, 695 F.2d 1228, 1235 n.10 (10th Cir. 1981).

Eleventh Circuit: United States v. Pepe, 747 F.2d 632, 665 (11th Cir. 1984); United States v. Brantley, 733 F.2d 1429 (11th Cir. 1984); United States v. Smith, 700 F.2d 627 (11th Cir. 1983); United States v. Thomas, 676 F.2d 531 (11th Cir. 1982).

1 L. Sand, et al., Modern Federal Jury Instructions - Instruction #11-2

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 3

IMPERMISSIBLE TO INFER PARTICIPATION FROM ASSOCIATION

You must not infer that the defendant was guilty of participating in criminal conduct merely from the fact that he associated with other people who were guilty of wrongdoing.

Authority

Second Circuit: United States v. Terry, 702 F.2d 299 (2d Cir.), cert. denied, 461 U.S. 931 (1983); United States v. Johnson, 513 F.2d 819 (2d Cir. 1978).

Third Circuit: United States v. Wexler, 838 F.2d 88, 91 (3d Cir. 1988).

Fifth Circuit: United States v. Perry, 624 F.2d 29 (5th Cir. 1980).

Seventh Circuit: United States v. Xheka, 704 F.2d 974 (7th Cir. 1983); United States v. Garcia, 562 F.2d 411 (7th Cir. 1977).

Eighth Circuit: United States v. Richmond, 700 F.2d 1183 (8th Cir. 1983).

Ninth Circuit: Ramirez v. United States, 363 F.2d 33 (9th Cir. 1966).

1 L. Sand, et al., Modern Federal Jury Instructions - Instruction #6-4

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 4

KNOWINGLY

You have been instructed that in order to sustain its burden of proof, the government must prove that the defendant acted knowingly. A person acts knowingly if he acts intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness. Whether the defendant acted knowingly may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case.

Source: Modern Federal Jury Instructions, Sand, Siffert, Loughlin & Reiss, Section 3A.01 (1992).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 5

PROOF OF KNOWLEDGE OR INTENT

The intent of a person or the knowledge that a person possesses at any given time may not be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done [omitted] by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

You may infer, but you certainly are not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

Source: Federal Jury Practice and Instructions, Devitt, Blackmar, Wolff and O'Malley, Section 17.07 (1992).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 6

"WILLFULLY"-DEFINED

The term "willfully", as used in these instructions to describe the alleged state of mind of the defendant, means that he knowingly performed an act [failed to act], deliberately and intentionally ["on purpose"] as contrasted with accidentally, carelessly, or unintentionally.

Source: Federal Jury Practice and Instructions, Devitt, Blackmar, Wolf and O'Malley, Section 17.05 (1992).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 7

WITNESS WITH INTEREST IN OUTCOME - 1

In evaluating credibility of the witnesses, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

This is not to suggest that every witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness' interest has affected or colored his or her testimony.

Authority

Second Circuit: United States v. Bufalino, 683 F.2d 639 (2d Cir. 1982), cert. denied, 459 U.S. 1104 (1983); United States v. Frank, 494 F.2d 145 (2d Cir.), cert. denied, 419 U.S. 828 (1974).

Fifth Circuit: United States v. Iacovetti, 466 F.2d 1147 (5th Cir. 1972), cert. denied, 410 U.S. 908 (1973).

Seventh Circuit: United States v. Lea, 618 F.2d 426 (7th Cir.), cert. denied, 449 U.S. 823 (1980).

Eighth Circuit: United States v. Klein, 701 F.2d 66 (8th Cir. 1983).

Ninth Circuit: United States v. Partin, 601 F.2d 1000 (9th Cir. 1979), cert. denied, 446 U.S. 964 (1980).

1 L. Sand, et al., Modern Federal Jury Instructions - Instruction #7-3

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 8

ACCOMPLICE--INFORMER--IMMUNITY - 1

The testimony of some witnesses must be considered with more caution than the testimony of other witnesses.

For example, a paid informer, or a witness who has been promised that he or she will not be charged or prosecuted, or a witness who hopes to gain more favorable treatment in his or her own case, may have a reason to make a false statement because he or she wants to strike a good bargain with the Government.

So, while a witness of that kind may be entirely truthful when testifying, you should consider that testimony with more caution than the testimony of other witnesses.

11th Circuit Pattern Jury Instruction S1.1

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 9

WITNESS USING OR ADDICTED TO DRUGS - 2

There has been evidence introduced at the trial that the government called as a witness a person who was using/addicted to drugs when the events he or she observed took place or who is now using drugs. I instruct you that there is nothing improper about calling such a witness to testify about events within his or her personal knowledge.

On the other hand, his or her testimony must be examined with greater scrutiny than the testimony of any other witness. The testimony of a witness who was using drugs at the time of the events he or she is testifying about, or who is using drugs/an addict at the time of his or her testimony may be less believable because of the effect the drugs may have on his or her ability to perceive or relate the events in question.

If you decide to accept his or her testimony, after considering it in light of all the evidence in this case, then you may give it whatever weight, if any, you find it deserves.

Authority

Second Circuit: United States v. Pagano, 207 F.2d 884 (2d Cir. 1953).

Third Circuit: Government of Virgin Islands v. Hendricks, 476 F.2d 776 (3d Cir. 1973).

Sixth Circuit: United States v. Griffin, 382 F.2d 823 (6th Cir. 1967).

Ninth Circuit: Guam v. Dela Rosa, 644 F.2d 1257 (9th Cir. 1980).

Tenth Circuit: United States v. Smith, 692 F.2d 658 (10th Cir. 1982), cert. denied, 459 U.S. 1200 (1983).

1 L. Sand, et al., Modern Federal Jury Instructions - Instruction # 7-

9.1

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 10

DEFENDANT'S FAILURE TO TESTIFY - 1

(1) A defendant has an absolute right not to [testify/present evidence]. The fact that he did not testify/present any evidence cannot be considered by you in any way. Do not even discuss it in your deliberations.

(2) Remember that it is up to the government to prove the defendant guilty beyond a reasonable doubt. It is not up to the defendant to prove that he is innocent.

6th Circuit Pattern Jury Instruction 7.02A

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 11

DEFENDANT'S TESTIMONY: EFFECT OF STAKE IN OUTCOME - 1

██████████ testified in his own behalf. You may be wondering if the personal stake that he has in the outcome of this trial should cause you to consider his testimony any differently from that of other witnesses. It is proper for you to consider his personal stake in the outcome of the trial when you decide whether or not you believe his testimony. But remember that ██████████ is presumed innocent unless the government proves, beyond a reasonable doubt, that he is guilty. The fact that he has been charged with the crime of possession with intent to distribute "crack" cocaine is no reason by itself for you not to believe what he said.

Remember also that it is proper to consider the personal stake, if any, of any other witness when you decide whether or not to believe that witness' testimony.

Federal Judicial Center, Pattern Criminal Jury Instruction 40

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 12

REASONABLE DOUBT - 1

The government has the burden of proving a defendant guilty beyond a reasonable doubt. Some of you may have served on civil juries where you were told that it is necessary to prove a fact that is more likely true than not by a mere preponderance of the evidence. That is not the standard here. In criminal cases the government's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.

There are a few things in this world that we know with absolute certainty and in criminal cases the law does not require proof that overcomes every possible doubt. If in facing your consideration of the evidence you are firmly convinced that a defendant is guilty of a crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty you must give him the benefit of the doubt and find him not guilty.

Instruction given by the Honorable Judge Edward N. Cahn on November 22, 1991 in United States v. Jaime Rivera, et al, Criminal Number 91-394

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing on the below-mentioned attorney by hand-delivering a copy of the same to the following address:

David B. Smith
Assistant United States Attorney
United States Attorney's Office
324 West Market Street
Greensboro, North Carolina 27401

This the _____ day of May, 1994.

GREGORY DAVIS
Assistant Federal Public Defender