

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

UNITED STATES OF AMERICA )

v. )

Cause No. 2:05 CR XX

MARY CONTRARY and )

PETER PIPER )

At the close of the evidence and before the argument of counsel, the Court indicates that it will give to the jury, after the argument of counsel, Court's Instructions numbered 1 through \_\_\_\_.

ENTER: January \_\_\_\_, 2006

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JUDGE, UNITED STATES DISTRICT COURT

COURT'S INSTRUCTION NO. \_\_\_\_\_

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. I will now 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 verdicts should be.

COURT'S INSTRUCTION NO. \_\_\_\_\_

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

COURT'S INSTRUCTION NO. \_\_\_\_\_

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, to 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.

COURT'S INSTRUCTION NO. \_\_\_\_\_

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.

COURT'S INSTRUCTION NO. \_\_\_\_\_

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 whether the defendant is guilty or not guilty. 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 verdicts.

COURT'S INSTRUCTION NO. \_\_\_\_\_

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 verdicts 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.

COURT'S INSTRUCTION NO. \_\_\_\_\_

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

COURT'S INSTRUCTION NO. \_\_\_\_\_

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

The indictment contains three counts. Each defendant is named in two of the counts. Each of the counts alleges that certain events occurred on or about January 1, 2004.

Count One alleges that defendant Mary Contrary and defendant Peter Piper knowingly and intentionally possessed fifty (50) grams or more of a mixture and substance containing a detectable amount of cocaine base, commonly known as “crack” cocaine, a Schedule II controlled substance, with the intent to distribute that cocaine base in violation of Title 21, United States Code, Section 841(a)(1).

Count Two alleges that defendant Mary Contrary knowingly and intentionally possessed a mixture and substance containing a detectable amount of marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 844(a).

Count Three alleges that defendant Peter Piper knowingly and intentionally possessed a mixture and substance containing a detectable amount

of marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 844(a).

The defendants have pleaded not guilty to the charges.

COURT'S INSTRUCTION NO. \_\_\_\_\_

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

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

COURT'S INSTRUCTION NO. \_\_\_\_\_

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

COURT'S INSTRUCTION NO. \_\_\_\_\_

You have received evidence of a statement said to have been made by defendant Mary Contrary.

You must decide whether the defendant did in fact make any such statement or statements. If you find that the defendant did make a statement, then you must decide what weight, if any, you feel the statement deserves. In making this decision, you should consider all matters in evidence having to do with the statement, including those concerning the defendant herself and the circumstances under which the statement was made.

You may not consider this statement as evidence against any defendant other than the one who made it.

COURT'S INSTRUCTION NO. \_\_\_\_\_

You have received evidence of a statement said to have been made by defendant Peter Piper.

You must decide whether the defendant did in fact make any such statement or statements. If you find that the defendant did make a statement, then you must decide what weight, if any, you feel the statement deserves. In making this decision, you should consider all 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 may not consider this statement as evidence against any defendant other than the one who made it.

COURT'S INSTRUCTION NO. \_\_\_\_\_

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.

COURT'S INSTRUCTION NO. \_\_\_\_\_

The indictment charges that each offense was committed “on or about” a certain date. The government must prove that each offense happened reasonably close to that date but is not required to prove that each alleged offense happened on that exact date.

COURT'S INSTRUCTION NO. \_\_\_\_\_

Even though the defendants are being tried together, you must give each of them separate consideration. In doing this, you must analyze what the evidence shows about each defendant, leaving out of consideration any evidence that was admitted solely against the other defendant. Each defendant is entitled to have his or her case decided on the evidence and the law that applies to that defendant.

COURT'S INSTRUCTION NO. \_\_\_\_\_

Count One of the indictment charges each defendant with possessing a controlled substance, specifically, fifty (50) grams or more of a mixture and substance containing a detectable amount of cocaine base, commonly known as “crack” cocaine, with the intent to distribute that controlled substance.

The offense of possessing a controlled substance with intent to distribute that controlled substance is defined by Title 21, Section 841(a)(1) of the United States Code, which provides in relevant part:

[I]t shall be unlawful for any person knowingly or intentionally . . . to . . . distribute . . . or possess with intent to . . . distribute . . . a controlled substance.

COURT'S INSTRUCTION NO. \_\_\_\_\_

Giving separate consideration to each defendant, to sustain the charge of possessing, with intent to distribute, a controlled substance as alleged in Count One of the indictment, specifically, fifty (50) grams or more of a mixture and substance containing a detectable amount of cocaine base, the government must prove the following propositions:

FIRST: the defendant knowingly and intentionally possessed a mixture or substance containing a detectable amount of cocaine base;

SECOND: the defendant possessed the cocaine base with the intent to deliver it to another person or persons; and

THIRD: the mixture or substance weighed over 50 grams.

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

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 to whom you are giving consideration guilty of this charge.

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 to whom you are giving consideration not guilty of this charge.

COURT'S INSTRUCTION NO. \_\_\_\_\_

Count Two of the indictment charges defendant Mary Contrary with knowingly and intentionally possessing a controlled substance, specifically, a mixture or substance containing a detectable amount of marijuana.

Count Three of the indictment charges defendant Peter Piper with knowingly and intentionally possessing a controlled substance, specifically, a mixture or substance containing a detectable amount of marijuana.

The offense of knowingly and intentionally possessing a controlled substance is defined by Title 21, Section 844(a) of the United States Code, which provides in relevant part:

It shall be unlawful for any person knowingly or intentionally to possess a controlled substance . . .

COURT'S INSTRUCTION NO. \_\_\_\_\_

Giving separate consideration to each defendant, to sustain the charge of knowingly and intentionally possessing a controlled substance as alleged in Counts Two and Three of the indictment, specifically, a mixture and substance containing a detectable amount of marijuana, the government must prove the following proposition:

the defendant knowingly and intentionally possessed a mixture or substance containing a detectible amount of marijuana;

It does not matter whether the defendant knew the substance was marijuana. It is sufficient that the defendant knew that it was some kind of prohibited drug.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, then you should find the defendant to whom you are giving consideration guilty of this charge.

If, on the other hand, you find from your consideration of all of the evidence that this proposition has not been proved beyond a reasonable doubt, then you should find the defendant to whom you are giving consideration not guilty of this charge.

COURT'S INSTRUCTION NO. \_\_\_\_\_

You are instructed that marijuana and cocaine base, commonly known as crack cocaine, are both controlled substances.

841(a)(definition of substance)

COURT'S INSTRUCTION NO. \_\_\_\_\_

Title 18, United States Code, Section 2, provides in pertinent part:

(a) Whoever . . . aids, abets, counsels, commands, induces or procures [the commission of an offense against the United States], is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

COURT'S INSTRUCTION NO. \_\_\_\_\_

Any person who knowingly aids, 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.

If a defendant knowingly caused the acts of another, the defendant is responsible for those acts as though he or she personally committed them.

COURT'S INSTRUCTION NO. \_\_\_\_\_

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.

COURT'S INSTRUCTION NO. \_\_\_\_\_

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.

The law recognizes also that possession may be sole or joint. 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.

A person can possess an object without owning the object, provided that the person has the power and intention to control the object.

possess-def

COURT'S INSTRUCTION NO. \_\_\_\_\_

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

COURT'S INSTRUCTION NO. \_\_\_\_\_

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 verdicts have been prepared for you.

Take these forms to the jury room, and when you have reached unanimous agreement on the verdicts, your foreperson will fill in and date the forms, and each of you will sign them.

COURT'S INSTRUCTION NO. \_\_\_\_\_

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

You must give separate consideration both to each count and to each defendant. 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 defendant and as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to that defendant under any other count.

COURT'S INSTRUCTION NO. \_\_\_\_\_

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. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at that time.

COURT'S INSTRUCTION NO. \_\_\_\_\_

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

You should make every reasonable effort to reach verdicts. 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 unanimous verdicts.

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.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	Cause No. 2:05 CR XX
	)	
MARY CONTRARY and	)	
PETER PIPER	)	

We, the jury, find the defendant, **MARY CONTRARY**,

1. \_\_\_\_\_ of knowingly and intentionally  
(Guilty or Not Guilty)

possessing, with intent to distribute, crack cocaine base, as charged in Count 1 of the indictment filed in this case.

If you find the defendant, Mary Contrary, guilty of knowingly and intentionally possessing, with intent to distribute, crack cocaine base, as charged in Count 1 of the indictment, place an "X" or a check next to any of the following propositions upon which you unanimously find beyond a reasonable doubt:

- |       |  |
|-------|--|
| _____ | The amount of crack cocaine base involved in this offense was fifty (50) grams or more.                              |
| _____ | The amount of crack cocaine base involved in this offense was five (5) grams or more but less than fifty (50) grams. |
| _____ | The amount of crack cocaine base involved in this offense was less than five (5) grams.                              |

2. \_\_\_\_\_ of knowingly and intentionally  
(Guilty or Not Guilty)

possessing a mixture and substance containing a detectable amount of marijuana,  
as charged in Count 2 of the indictment filed in this case.

**DATED: January \_\_\_\_, 2006**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**FOREPERSON**