

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA)
)
 vs.) 2:11-cr-00077
)
JUAN BRISEÑO)

JURY INSTRUCTIONS (GUILT PHASE)

Dated: February 26, 2015.

/s/ Philip P. Simon
PHILIP P. SIMON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

INSTRUCTION NO. 1

Members of the jury, I will now instruct you on the law that you must follow in deciding this case. I will also give you a copy of these instructions to use in the jury room. You must follow all of my instructions about the law, even if you disagree with them. This includes the instructions I gave you before the trial, any instructions I gave you during the trial, and the instructions I am giving you now.

As jurors, you have two duties. Your first duty is to decide the facts from the evidence that you saw and heard here in court. This is your job, not my job or anyone else's job.

Your second duty is to take the law as I give it to you, apply it to the facts, and decide if the government has proved the defendant guilty beyond a reasonable doubt.

You must perform these duties fairly and impartially. Do not let sympathy, prejudice, fear, or public opinion influence you. In addition, do not let any person's race, color, religion, national ancestry, or gender influence you.

You must not take anything I said or did during the trial as indicating that I have an opinion about the evidence or about what I think your verdict should be.

INSTRUCTION NO. 2

The charges against the defendant are in a document called a fourth superseding indictment.

The fourth superseding indictment in this case charges that the defendant committed the following crimes:

Count One of the fourth superseding indictment charges the defendant with conspiracy to commit racketeering. Count Two charges the defendant with conspiring to knowingly and intentionally possess with intent to distribute and distribute one hundred (100) kilograms or more of a mixture and substance containing a detectable amount of marijuana and five (5) kilograms or more of a mixture and substance containing a detectable amount of cocaine. Counts Nine, Thirteen, Fifteen, Seventeen, Nineteen, and Twenty-One charge the defendant with murder in aid of racketeering. Counts Twenty-Three, Twenty-Seven, and Twenty-Nine charge the defendant with attempted murder in aid of racketeering. Counts Twenty-Four, Twenty-Eight, and Thirty charge the defendant with use of a firearm during and in relation to a crime of violence. The defendant has pled not guilty to the charges.

The fourth superseding indictment is simply the formal way of telling the defendant what crimes he is accused of committing. It is not evidence that the defendant is guilty. It does not even raise a suspicion of guilt.

INSTRUCTION NO. 3

The defendant is presumed innocent of each and every one of the charges. This presumption continues throughout the case, including during your deliberations. 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 defendant's guilt beyond a reasonable doubt. This burden of proof stays with the government throughout the case.

The defendant is never required to prove his innocence. He is not required to produce any evidence at all.

INSTRUCTION NO. 4

You must make your decision based only on the evidence that you saw and heard here in court. Do not consider anything you may have seen or heard outside of court, including anything from the newspaper, television, radio, the Internet, or any other source.

The evidence includes only what the witnesses said when they were testifying under oath, the exhibits that I allowed into evidence, and any stipulations that the lawyers agreed to. A stipulation is an agreement that certain facts are true or that a witness would have given certain testimony.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. If what a lawyer said is different from the evidence as you remember it, the evidence is what counts. The lawyers' questions and objections likewise are not evidence.

A lawyer has a duty to object if he thinks a question is improper. If I sustained objections to questions the lawyers asked, you must not speculate on what the answers might have been.

If, during the trial, I struck testimony or exhibits from the record, or told you to disregard something, you must not consider it.

INSTRUCTION NO. 5

Give the evidence whatever weight you decide it deserves. Use your common sense in weighing the evidence, and consider the evidence in light of your own everyday experience.

People sometimes look at one fact and conclude from it that another fact exists. This is called an inference. You are allowed to make reasonable inferences, so long as they are based on the evidence.

INSTRUCTION NO. 6

You may have heard the terms “direct evidence” and “circumstantial evidence.”

Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves a fact.

You are to consider both direct and circumstantial evidence. The law does not say that one is better than the other. It is up to you to decide how much weight to give to any evidence, whether direct or circumstantial.

INSTRUCTION NO. 7

Do not make any decisions simply by counting the number of witnesses who testified about a certain point.

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.

What is important is how truthful and accurate the witnesses were and how much weight you think their testimony deserves.

INSTRUCTION NO. 8

A defendant has an absolute right not to testify. You may not consider in any way the fact that the defendant did not testify. You should not even discuss it in your deliberations.

INSTRUCTION NO. 9

Part of your job as jurors is to decide how believable each witness was, and how much weight to give each witness's testimony. You may accept all of what a witness says, or part of it, or none of it.

Some factors you may consider include:

- the intelligence of the witness;
- the witness's ability and opportunity to see, hear, or know the things the witness testified about;
- the witness's memory;
- the witness's demeanor;
- whether the witness had any bias, prejudice, or other reason to lie or slant the testimony;
- the truthfulness and accuracy of the witness's testimony in light of the other evidence presented; and
- inconsistent statements or conduct by the witness.

INSTRUCTION NO. 10

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

INSTRUCTION NO. 11

You have heard evidence that before the trial, witnesses made statements that may be inconsistent with their testimony here in court. You may consider an inconsistent statement made before the trial to help you decide how believable a witness's testimony was here in court. If an earlier statement was made under oath, then you can also consider the earlier statement as evidence of the truth of whatever the witness said in the earlier statement.

INSTRUCTION NO. 12

You have heard testimony from witnesses David Almaraz, Anthony Baldazo, Jacob Davidovich, Galo Feliciano, Vincent Garza, Andres Lara, Carlos Orta, Anthony Romero and Joseph Torres, each of whom was promised certain benefits in return for his testimony and cooperation with the government. In addition, Almaraz, Baldazo, Feliciano, Garza and Torres pled guilty to one or more of the crimes the defendant is charged with committing. You may not consider any of their guilty pleas as evidence against the defendant.

You may give these witnesses' testimony whatever weight you believe is appropriate, keeping in mind that you must consider that testimony with caution and great care.

INSTRUCTION NO. 13

You may consider evidence that a witness was convicted of a crime only in deciding the believability of his testimony. You may not consider it for any other purpose.

INSTRUCTION NO. 14

You have heard testimony that the defendant made a statement to FBI Agent Arthur Grist. You must decide whether the defendant actually made the statement and, if so, how much weight to give to the statement. In making these decisions, you should consider all of the evidence, including the defendant's personal characteristics and circumstances under which the statement may have been made.

INSTRUCTION NO. 15

You have heard testimony of identifications of people. Identification testimony is an expression of the witness's belief or impression. In evaluating this testimony, you should consider the opportunity the witness had to observe the person at the time of or near 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 must prove beyond a reasonable doubt that the defendant is the person who committed the crime that is charged.

INSTRUCTION NO. 16

You have heard several witnesses who gave opinions and testimony about certain subjects. Specifically:

1. Officer Darryl Shaffer testified about police dog training;
2. Forensic Pathologists Dr. John Cavanaugh, Dr. J. Lawrence Cogan and Dr. Young M. Kim each testified about the cause and manner of death; and
3. Henry Hatch and Melissa Oberg testified concerning firearms and ammunition testing.

You do not have to accept these witnesses' opinions or testimony. You should judge these witnesses' opinions and testimony the same way you judge the testimony of any other witness. In deciding how much weight to give to these opinions and testimony, you should consider each witness's qualifications, how he or she reached his or her opinions and conclusions, and the factors I have described for determining the believability of testimony.

INSTRUCTION NO. 17

You have heard recorded conversations and seen video recordings. This is proper evidence that you should consider together with and in the same way you consider the other evidence.

The recordings and videotapes were admitted into evidence and will be provided to you for your use during deliberation along with a device to play them on and instructions on its use. It is up to you to decide whether to watch and/or listen to the recordings during your deliberations. You may, if you wish, rely on your recollections of what you heard during the trial.

INSTRUCTION NO. 18

Certain summaries were admitted in evidence. You may use those summaries as evidence even though the underlying records are not here.

It is up to you to decide how much weight to give to the summaries.

INSTRUCTION NO. 19

Certain diagrams and notations on exhibits were shown to you to help explain other evidence that was admitted. These diagrams and notations are not themselves evidence or proof of any facts, so you will not have these particular diagrams or notations during your deliberations. However, based on your recollection of these diagrams and notations, if they do not correctly reflect the facts shown by the evidence, you should disregard these diagrams and notations and determine the facts from the underlying evidence.

INSTRUCTION NO. 20

If you have taken notes during the trial, you may use them during deliberations to help you remember what happened during the trial. You should use your notes only as aids to your memory. The notes are not evidence. All of you should rely on your independent recollection of the evidence, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impressions of each juror.

INSTRUCTION NO. 21

The fourth superseding indictment charges that the crimes happened “on or about” certain dates. The government must prove that the crimes happened reasonably close to those dates. The government is not required to prove that the crimes happened on those exact dates.

INSTRUCTION NO. 22

The defendant has been accused of more than one crime. The number of charges is not evidence of guilt and should not influence your decision.

You must consider each charge separately. Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any other charge.

INSTRUCTION NO. 23

An offense may be committed by more than one person. A defendant's guilt may be established without proof that the defendant personally performed every act constituting the crime charged.

INSTRUCTION NO. 24

Any person who knowingly aids, counsels, commands, induces, or procures the commission of an offense may be found guilty of that offense if he knowingly participated in the criminal activity and tried to make it succeed.

If the defendant knowingly causes the acts of another, then the defendant is responsible for those acts as though he personally committed them.

INSTRUCTION NO. 25

A person acts knowingly if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant acted knowingly, you may consider all of the evidence, including what the defendant did or said.

INSTRUCTIONS FOR COUNT 1 CHARGING
RACKETEERING CONSPIRACY

INSTRUCTION NO. 26

The defendant is charged in Count One with conspiracy to commit racketeering.

The defendant is charged in Count Two with conspiracy to possess with intent to distribute and distribute marijuana and cocaine.

For purposes of both Counts One and Two, you are instructed that a conspiracy is an express or implied agreement between two or more persons to commit a crime. A conspiracy may be proven even if its goal or goals were not accomplished.

In deciding whether the charged conspiracy existed, you may consider all of the circumstances, including the words and acts of each of the alleged participants.

INSTRUCTION NO. 27

To be a member of a conspiracy, the defendant does not need to join it at the beginning, and he does not need to know all of the other members or all of the means by which the illegal goal or goals of the conspiracy were to be accomplished. The government must prove beyond a reasonable doubt that the defendant was aware of the illegal goal or goals of the conspiracy and knowingly joined the conspiracy.

A defendant is not a member of a conspiracy just because he knew and/or associated with people who were involved in a conspiracy, knew there was a conspiracy, and/or was present during conspiratorial discussions.

In deciding whether the defendant joined the charged conspiracy, you must base your decision only on what the defendant did or said. To determine what the defendant did or said, you may consider the defendant's own words or acts. You may also use the words or acts of other persons to help you decide what the defendant did or said.

INSTRUCTION NO. 28

Count One charges the defendant with conspiracy to commit racketeering. In order for you to find the defendant guilty of this charge, the government must prove each of the five following elements beyond a reasonable doubt:

1. That the conspiracy as charged in Count One existed;
2. That the Defendant knowingly became a member of the conspiracy with the intent to advance the conspiracy;
3. That the conspiracy was an agreement to conduct or participate in the conduct of the affairs of the Imperial Gangsters Street Gang, an enterprise, through a pattern of racketeering activity as described in Count One;
4. That the Imperial Gangsters was an enterprise; and
5. That the activities of the Imperial Gangsters affected interstate commerce.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to the defendant, then you should find the defendant not guilty.

INSTRUCTION NO. 29

In order to find a “pattern of racketeering activity” for purposes of Count One, you must find beyond a reasonable doubt that the defendant agreed that some member or members of the conspiracy would commit at least two acts of racketeering as described in Count One, and that they were separate acts. You must also find that those acts were in some way related to each other and that there was continuity between them.

Acts are related to each other if they are not isolated events, that is, if they have similar purposes, or results, or participants, or victims, or are committed a similar way, or have similar distinguishing characteristics, or are part of the affairs of the same enterprise.

There is continuity between acts if, for example, they are ongoing over a substantial period of time, or had the potential to continue over a substantial period, or if they are part of the regular way some entity does business or conducts its affairs.

For purposes of Count One, the government does not have to prove that any racketeering acts were actually committed at all, or that the defendant agreed to personally commit any such acts, or that the defendant agreed that two or more specific acts would be committed.

INSTRUCTION NO. 30

The term “enterprise” can include a group of people associated together for a common purpose of engaging in a course of conduct. This group may be associated together for purposes that are both legal and illegal.

In considering whether a group is an “enterprise,” you may consider whether it has an ongoing organization or structure, either formal or informal, and whether the various members of the group functioned as a continuing unit. A group may continue to be an “enterprise” even if it changes membership by gaining or losing members over time.

The government must prove that the group described in the fourth superseding indictment was the “enterprise” charged, but need not prove each and every allegation in the fourth superseding indictment about the enterprise or the manner in which the enterprise operated. The government need not prove the association had any form or structure beyond the minimum necessary to conduct the charged pattern of racketeering.

INSTRUCTION NO. 31

A person conducts or participates in the conduct of the affairs of an enterprise if that person uses his position in, or association with, the enterprise to perform acts which are involved in some way in the operation or management of the enterprise, directly or indirectly, or if the person causes another to do so. In order to have conducted or participated in the conduct of the affairs of an enterprise, a person need not have participated in all of the activity alleged in Count One.

A person conspires to conduct or participate in the conduct of the affairs of an enterprise if that person agrees to knowingly facilitate the activities of the operators or managers who conduct or participate in the conduct of its affairs.

INSTRUCTION NO. 32

To be associated with an enterprise, a person must be involved with the enterprise in a way that is related to its affairs or common purpose, although the person need not have a stake in the goals of the enterprise and may even act in a way that subverts those goals. A person may be associated with an enterprise without being so throughout its existence.

INSTRUCTION NO. 33

Interstate commerce includes the movement of money, goods, services or persons from one state to another or between another country and the United States. This would include the purchase or sale of goods or supplies from outside the state in which the enterprise was located, the use of interstate mail or wire facilities, or the causing of any of those things. If you find that beyond a reasonable doubt either (a) that the enterprise made, purchased, sold or moved goods or services that had their origin or destination outside the state in which the enterprise was located, or (b) that the actions of the enterprise affected in any degree the movement of money, goods or services across state lines, then interstate commerce was engaged in or affected.

The government need only prove that the enterprise as a whole engaged in interstate commerce or that its activity affected interstate commerce to any degree, although proof that racketeering acts did affect interstate commerce meets that requirement. The government need not prove that the defendant engaged in interstate commerce, or that the acts of the defendant affected interstate commerce.

INSTRUCTION NO. 34

For Count One, the government must prove beyond a reasonable doubt that the defendant agreed that a conspirator, who could be the defendant himself, did or would intentionally commit, or cause, or aid and abet the commission of, two or more of the racketeering acts of the type or types alleged in the fourth superseding indictment. Your verdict must be unanimous as to which type or types of racketeering activity you find that the defendant agreed was or would be committed, caused, or aided and abetted.

For purposes of Count One, the law defines “racketeering activity” as acts involving murder, attempted murder and robbery, as those offenses are defined under Indiana State law, and acts constituting Federal Robbery, and Drug Trafficking, as those offenses are defined under federal law.

I will now instruct you on the elements of the offenses listed in the fourth superseding indictment as racketeering activity.

Murder (Indiana Code 35-42-1-1)

Under Indiana law, a person commits the offense of murder when he:

1. knowingly or intentionally,
2. killed,
3. a victim.

Attempted Murder (I.C. 35-41-5-1(a), I.C. 35-42-1-1)

Under Indiana law, a person commits the crime of attempted murder when the person:

1. acting with the specific intent to kill the victim,

2. did aim a firearm at the victim and shoot,
3. which was conduct constituting a substantial step toward the commission of the intended crime of killing the victim.

Aiding, Inducing, or Causing Attempted Murder (I.C. 35-41-2-4 and I.C. 35-41-5-1(a) and I.C. 35-42-1-1)

Under Indiana law, a person commits the offense of aiding, inducing, or causing attempted murder when the person:

1. knowingly or intentionally,
2. aided or induced or caused another person to engage,
3. in conduct that constituted a substantial step toward killing a victim,
4. and both the defendant and the other person acted with the specific intent to kill the victim.

Robbery (Indiana Code 35-42-5-1)

Under Indiana law, a person commits the offense of robbery when the person:

1. knowingly or intentionally,
2. takes property from another person or takes property from the presence of another person,
3. by using or threatening the use of force on another person or by putting another person in fear.

Aiding, Inducing, or Causing an Offense (I.C. 35-41-2-4)

Under Indiana law, a person aids, induces, or causes a specified offense when the person:

1. knowingly or intentionally,
2. aided or induced or caused,
3. another person to commit the offense, as that offense is defined by statute,
4. by assisting in, bringing about, or ordering the commission of the offense.

Federal Robbery (18 U.S.C. § 1951)

A person commits robbery under federal law when:

1. he knowingly obtains money or property from or in the presence of a victim;
 2. he does so by means of robbery, that is, by unlawfully taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence;
 3. he believes that the victim parted with the money or property because of the robbery;
- and
4. his conduct affects interstate commerce.

Narcotics Trafficking - Distribution and Possession with Intent to Distribute a Controlled Substance 21 U.S.C. § 841(a)(1) and Conspiracy to Distribute and Possess with Intent to Distribute a Controlled Substance (21 U.S.C. § 846).

I will be instructing you on the elements of distribution, possession with intent to distribute, and conspiracy to distribute and possess with intent to distribute a controlled substance when I give you the instructions for Count Two. Those instructions should be applied here.

United States v. Martin Anaya, 2:10-cr-00109 RL (Instruction 33 in Court's Instructions, Docket Entry #596, at page 35); *Indiana Pattern Jury Instructions Criminal Instruction No.3.01 - Murder-Killing a Human Being*; *Indiana Pattern Jury Instructions Criminal Instruction No. 2.01(a) - Attempted Murder*; *Indiana Pattern Jury Instructions Criminal Instruction No. 3.49 - Robbery*; *Indiana Pattern Jury Instructions Criminal Instruction No. 2.11 - Aiding, Inducing or Causing an Offense*; *Indiana Pattern Jury Instruction Criminal Instruction No. 2.11(a) - Aiding, Inducing or Causing Attempted Murder*; *7th Circuit Pattern Jury Instruction, 18 U.S.C. § 1951 - Extortion - Robbery - Elements & 18 U.S.C. § 1951 - Definition of Robbery*.

INSTRUCTIONS FOR COUNT 2 CHARGING
DRUG CONSPIRACY

INSTRUCTION NO. 35

Count Two charges the defendant with conspiracy to possess with intent to distribute and distribute marijuana and cocaine. In order for you to find the defendant guilty of this charge, the government must prove both of the following elements beyond a reasonable doubt:

1. The conspiracy as charged in Count Two existed; and
2. The defendant knowingly became a member of the conspiracy with an intent to advance the conspiracy.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt, then you should find the defendant not guilty.

INSTRUCTION NO. 36

As I have already instructed you, a conspiracy is an express or implied agreement between two or more persons to commit a crime. A conspiracy may be proven even if its goal or goals were not accomplished.

In deciding whether the conspiracy charged in Count Two existed, you may consider all of the circumstances, including the words and acts of each of the alleged participants.

To be a member of a conspiracy, the defendant does not need to join it at the beginning, and he does not need to know all of the other members or all of the means by which the illegal goal or goals of the conspiracy were to be accomplished. The government must prove beyond a reasonable doubt that the defendant was aware of the illegal goal or goals of the conspiracy and knowingly joined the conspiracy.

The defendant is not a member of a conspiracy just because he knew and/or associated with people who were involved in a conspiracy, knew there was a conspiracy, and/or was present during conspiratorial discussions.

In deciding whether the defendant joined the charged conspiracy, you must base your decision only on what that defendant did or said. To determine what the defendant did or said, you may consider that defendant's own words or acts. You may also use the words or acts of other persons to help you decide what the defendant did or said.

7th Circuit Pattern Jury Instructions, No. 5.09 (Conspiracy - Definition of Conspiracy); *7th Circuit Pattern Jury Instructions*, No. 5.10 (Conspiracy - Membership in Conspiracy).

INSTRUCTION NO. 37

In order to find that the government has proved the defendant guilty of the conspiracy charged in Count Two, the jury must unanimously agree that the defendant conspired to commit at least one of the following offenses:

1. distributing marijuana;
2. distributing cocaine;
3. possession with intent to distribute marijuana; or
4. possession with intent to distribute cocaine.

The government is not required to prove that the defendant conspired to commit every one of the four offenses mentioned above. However, the government is required to prove that the defendant conspired to commit at least one of these four offenses. To find that the government has proven this, you must unanimously agree on which particular offense the defendant conspired to commit, as well as all of the other elements of the crime charged.

For example, if some of you were to find that the government has proved beyond a reasonable doubt that the defendant conspired to commit the offense of distributing marijuana, and the rest of you were to find that the government has proved beyond a reasonable doubt that the defendant conspired to commit the offense of distributing cocaine, then there would be no unanimous agreement on which offense the government has proved. On the other hand, if all of you were to find that the government has proved beyond a reasonable doubt that the defendant conspired to commit the offense of distributing marijuana, then there would be unanimous

agreement.

7th Circuit Pattern Jury Instructions, No. 4.04 (Unanimity on Specific Acts (modified)); *7th Circuit Pattern Jury Instructions*, No. 5.08(A) (Conspiracy - Overt Act Required (Committee Comments (b) and (e))).

INSTRUCTION NO. 38

Marijuana and cocaine are both controlled substances.

INSTRUCTION NO. 39

To assist you in determining whether the defendant conspired to distribute a controlled substance as charged in Count Two, the Court instructs you that the legal elements for distribution of a controlled substance are as follows:

First, the defendant knowingly distributed a controlled substance;

Second, the defendant knew the substance was some kind of controlled substance. The government is not required to prove that the defendant knew the substance was marijuana or that the substance was cocaine.

INSTRUCTION NO. 40

A person “distributes” a controlled substance if he delivers or transfers possession of the controlled substance to someone else or causes a person to deliver or transfer possession of the controlled substance to another person.

INSTRUCTION NO. 41

To assist you in determining whether the defendant conspired to possess with intent to distribute a controlled substance, the Court instructs you that the legal elements for possession with intent to distribute a controlled substance are as follows:

First, the defendant knowingly possessed a controlled substance; and

Second, the defendant intended to distribute the substance to another person;

and

Third, the defendant knew the substance was some kind of controlled substance.

The government is not required to prove that the defendant knew the substance was marijuana or that the substance was cocaine.

INSTRUCTION NO. 42

A person possesses an object if he has the ability and intention to exercise direction or control over the object, either directly or through others. A person may possess an object even if he is not in physical contact with it and even if he does not own it.

INSTRUCTIONS FOR COUNTS
9, 13, 15, 17, 19 AND 21 CHARGING
MURDER IN AID OF RACKETEERING

INSTRUCTION NO. 43

Count Nine charges the defendant with the murder of Luis Ortiz in aid of racketeering. Count Thirteen charges the defendant with the murder of Michael Sessum in aid of racketeering. Count Fifteen charges the defendant with the murder of Miguel Mejias in aid of racketeering. Count Seventeen charges the defendant with the murder of Harris Brown in aid of racketeering. Count Nineteen charges the defendant with the murder of Miguel Colon in aid of racketeering. Count Twenty-One charges the defendant with the murder of Latroy Howard in aid of racketeering.

To sustain the charge of murder in aid of racketeering activity, the government must prove each of the five following elements beyond a reasonable doubt:

First, that the Imperial Gangsters were an enterprise;

Second, that the Imperial Gangsters enterprise engaged in “racketeering activity” as that term is defined earlier in these instructions;

Third, that the Imperial Gangsters enterprise affected interstate commerce;

Fourth, that the defendant committed the murder of the victim in the count you are considering; and

Fifth, that the defendant’s purpose in committing the murder was to maintain or increase his position in the Imperial Gangsters enterprise.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt for the count you are considering, then you should find the defendant guilty of the count you are considering.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt for the count you are considering, then you should find the defendant not guilty of the count you are considering.

United States v. Martin Anaya, 2:10-cr-00109 RL (Instruction 47 in Court's Instructions, Docket Entry #596, at page 56); see also, *United States v. Kamahele*, 748 F.3d 984, 1007 (10th Cir. 2014); *United States v. Umaña*, 750 F.3d 320, 334-35 (4th Cir. 2014), cert. petition pending; *United States v. Hinojosa*, 463 Fed. Appx. 432, 449 (5th Cir. 2012); *United States v. Persico*, 645 F.3d 85, 105 (2d Cir. 2011), cert. denied, *DeRoss v. United States*, 132 S. Ct. 593 (2011), and *Persico v. United States*, 2012 U.S. LEXIS 1795 (Feb. 27, 2012); *United States v. Banks*, 514 F.3d 959, 964 (9th Cir. 2008); *United States v. Nascimento*, 491 F.3d 25, 31-32 (1st Cir. 2007).

INSTRUCTION NO. 44

I have already instructed you as to what the terms “murder” under Indiana law, “enterprise,” “racketeering activity” and “interstate commerce” mean when I instructed you on Count One, and each of those instructions apply here as well.

INSTRUCTION NO. 45

For the purpose of each of Counts Nine, Thirteen, Fifteen, Seventeen, Nineteen, and Twenty-One, the government must prove beyond a reasonable doubt for the count you are considering that at least one of the defendant's purposes in committing the crime of violence was to maintain or increase position in the Imperial Gangsters enterprise.

In determining whether one of the defendant's purposes was to "maintain" or "increase" his position in the enterprise, you should give those words their ordinary meaning.

The government does not have to prove that the defendant's sole or principal motive in committing the murder was to maintain or increase position in the Imperial Gangsters enterprise. It is sufficient if you find that the defendant committed a murder because he knew it was expected of him by reason of his membership in the Imperial Gangsters enterprise or that he committed it in furtherance of that membership.

INSTRUCTIONS FOR COUNTS
23, 27 AND 29 CHARGING
ATTEMPTED MURDER IN AID OF
RACKETEERING

INSTRUCTION NO. 46

Counts Twenty-Three, Twenty-Seven, and Twenty-Nine charge the defendant with attempted murder in aid of racketeering.

To sustain the charge of attempted murder in aid of racketeering, the government must prove each of the five following elements beyond a reasonable doubt:

First, that the Imperial Gangsters were an enterprise;

Second, that the Imperial Gangsters enterprise engaged in “racketeering activity” as that term is defined earlier in these instructions;

Third, that the Imperial Gangsters enterprise affected interstate commerce;

Fourth, that the defendant committed the attempted murder as charged in the count that you are considering; and

Fifth, that the defendant’s purpose in committing the attempted murder was to maintain or increase his position in the Imperial Gangsters enterprise.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt, then you should find the defendant guilty of the count you are considering.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt, then you should find the defendant not guilty of the count you are considering.

United States v. Phillips, 239 F.3d 829, 845 (7th Cir. 2001); *United States v. Martin Anaya*, 2:10-cr-00109 RL (Instruction No. 47 in Court’s Instructions, Docket Entry #596, at page 56) (modified from Murder in Aid of Racketeering).

INSTRUCTION NO. 47

I have already instructed you as to what the terms “murder” under Indiana law, “enterprise,” “racketeering activity” and “interstate commerce” mean when I instructed you on Count One, and each of those instructions apply here as well.

INSTRUCTION NO. 48

For the purpose of Counts Twenty-Three, Twenty-Seven, and Twenty-Nine, the government must prove beyond a reasonable doubt, for each count you are considering, that at least one of the defendant's purposes in committing the crime of violence you are considering was to maintain or increase position in the Imperial Gangsters enterprise. I have instructed you regarding this element in Instruction Number 45 as it relates to Counts Nine, Thirteen, Fifteen, Seventeen, Nineteen, and Twenty-One which charge murder in aid of racketeering, and that instruction applies here as well.

United States v. Martin Anaya, 2:10-cr-00109 RL (Instruction No. 50 in Court's Instructions, Docket Entry #596, at page 59) (modified); see *United States v. DeSilva*, 505 F.3d 711, 715-16 (7th Cir. 2007).

INSTRUCTION NO. 49

For the purpose of Counts Twenty-Three, Twenty-Seven, and Twenty-Nine, and as I have already instructed you previously, under Indiana law, a person commits the offense of attempted murder when the person:

- (1) acting with the specific intent to kill the victim;
- (2) did point a firearm at the victim and shoot at the victim;
- (3) which was conduct constituting a substantial step toward the commission of the intended crime of killing the victim.

Under Indiana law, a person aids, induces, or causes attempted murder when the person:

- (1) knowingly or intentionally;
- (2) aided another person when the other person was engaged, or induced or caused another person to engage;
- (3) in conduct that constituted a substantial step toward killing of an individual;
- (4) and both persons acted with the specific intent to kill that individual.

Indiana Criminal Code Sections 35-41-5-1(a) and 35-42-1-1 (Attempted Murder) and 35-41-2-4 (Aiding, Inducing or Causing Attempted Murder); *Indiana Pattern Jury Instructions Criminal Instruction No. 2.01(a)* (Attempted Murder) and *No. 2.11(a)* (Aiding, Inducing, or Causing Attempted Murder); *United States v. Martin Anaya*, 2:10-cr-00109 RL (Instruction 51 in Court's Instructions, Docket Entry #596, at page 61) (modified).

INSTRUCTION NO. 50

When a person intends to kill another person, or to aid or cause someone else to kill another person, and in addition attempts to kill a different person, or aids or causes the attempted killing of a different person, his intent is transferred from the person to whom it was directed to the person whose killing was attempted, and he may be found guilty of the Attempted Murder, or Aiding, Inducing, or Causing the Attempted Murder of the person whose killing was attempted.

INSTRUCTIONS FOR COUNTS 24, 28 AND 30
CHARGING DISCHARGE, CARRY, OR USE OF A
FIREARM DURING AND IN RELATION TO A
CRIME OF VIOLENCE (ATTEMPTED MURDER)

INSTRUCTION NO. 51

Count Twenty-Four charges the defendant with knowingly discharging, carrying, or using a firearm during and in relation to a crime of violence, namely, attempted murder in aid of racketeering as set forth in Count Twenty-Three. Count Twenty-Eight charges the defendant with knowingly discharging, carrying, or using a firearm during and in relation to a crime of violence, namely, attempted murder in aid of racketeering as set forth in Count Twenty-Seven. Count Thirty charges the defendant with knowingly discharging, carrying, or using a firearm during and in relation to a crime of violence, namely, attempted murder in aid of racketeering as set forth in Count Twenty-Nine.

In order for you to find the defendant guilty of Counts Twenty-Four, Twenty-Eight or Thirty, the government must prove, for each, both of the following elements beyond a reasonable doubt:

1. The defendant committed the crime of attempted murder in aid of racketeering as charged in the count referenced in the count you are considering; and
2. He knowingly discharged, used, or carried a firearm during and in relation to such crime.

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

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable

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

Alleyne v. United States, __ U.S. __, 133 S.Ct. 2151 (2013) (enhancements for brandishing and discharging a firearm must be proved beyond a reasonable doubt to a jury); *7th Circuit Pattern Jury Instructions*, 18 U.S.C. § 924(c)(1)(A) (Using or Carrying a Firearm During and in relation to a Crime of Violence - Elements) (modified).

INSTRUCTION NO. 52

Counts Twenty-Four, Twenty-Eight, and Thirty charge the offense of knowingly discharging, carrying, or using a firearm during and in relation to the crime of attempted murder. The government is not required to prove that the defendant did all three of these acts with a firearm during and in relation to the crime of attempted murder. However, the government is required to prove that the defendant did at least one of these three acts with a firearm during and in relation to the crime of attempted murder. To find that the government has proven this, you must agree unanimously on which particular act with a firearm the defendant did, as well as all of the other elements of the crime charged.

For example, if some of you find that the government has proved beyond a reasonable doubt that the defendant discharged a firearm during and in relation to the crime of attempted murder, and the rest of you were to find that the government has proved beyond a reasonable doubt that the defendant carried a firearm during and in relation to the crime of attempted murder, then there would be no unanimous agreement on which act with the firearm the government has proved. On the other hand, if all of you were to find that the government has proved beyond a reasonable doubt that the defendant discharged the firearm during and in relation to the attempted murder, then there would be unanimous agreement.

7th Circuit Pattern Jury Instructions, No. 4.04 - Unanimity on Specific Acts; *Alleyne v. United States*, __ U.S. __, 133 S.Ct. 2151 (2013) (enhancements for brandishing and discharging a firearm must be proved beyond a reasonable doubt to a jury).

INSTRUCTION NO. 53

A defendant aids, counsels, commands, induces, or procures the commission of the offense only if he knowingly and intentionally assists another's use or carrying of a firearm during and in relation to a crime of violence. This requires the government to prove the following beyond a reasonable doubt:

1. The defendant knew, either before or during the crime, of another person's use or carrying of a firearm; and,
2. The defendant intentionally facilitated the use or carrying of the firearm once so informed.

A person who merely aids the underlying offense knowing that a firearm would be used or carried does not aid, counsel, command, induce, or procure the commission of the offense charged in the count you are considering.

If you find from your consideration of all the evidence that the government proved both of these elements beyond a reasonable doubt, then you should find the defendant guilty of the count you are considering.

If, on the other hand, you find from your consideration of all the evidence that the government failed to prove either of these elements beyond a reasonable doubt, then you should find the defendant not guilty of the count you are considering.

7th Circuit Pattern Jury Instructions, 18 U.S.C. § 924(c) (1)(A) (Using or Carrying a Firearm During and in Relation to a Crime of Violence or Drug Trafficking Crime -- Accountability Theory Elements).

INSTRUCTION NO. 54

A person “carries” a firearm when he knowingly transports it on his person or in a vehicle or container.

INSTRUCTION NO. 55

For purposes of Twenty-Four, Twenty-Eight, and Thirty, the term “use” means the “active employment” of a firearm. The term is not limited to use as a weapon, and includes brandishing, displaying, bartering, striking with, firing, and attempting to fire a firearm. A defendant’s reference to a firearm calculated to bring about a change in the circumstances of the offense constitutes “use” during and in relation to a crime. However, mere possession or storage of a firearm, at or near the site of the crime, drug proceeds or paraphernalia is not enough to constitute use of that firearm.

INSTRUCTION NO. 56

For purposes of Counts Twenty-Four, Twenty-Eight, and Thirty, “during” means at any point within the offense conduct charged.

INSTRUCTION NO. 57

A person uses a firearm “in relation to” a crime if there is a connection between the use of the firearm and the crime of violence. The firearm must have some purpose or effect with respect to the crime; its presence or involvement cannot be the result of accident or coincidence. The firearm must at least facilitate, or have the potential of facilitating, the crime.

FINAL INSTRUCTIONS AND
SPECIAL VERDICT FORM INSTRUCTIONS
FOR COUNTS 1 AND 2

INSTRUCTION NO. 58

Once you are all in the jury room, the first thing you should do is choose a foreperson. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. You may discuss the case only when all jurors are present.

Once you start deliberating, do not communicate about the case or your deliberations with anyone except other members of your jury. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, like your phones, computers, or on the Internet, or any other method of communication.

If you need to communicate with me while you are deliberating, send a note through the court security officer. The note should be signed by the foreperson or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer. Please be advised that transcripts of trial testimony are not available to you. You must rely on your collective memory of the testimony.

If you send me a message, do not include the breakdown of any votes you may have conducted. In other words, do not tell me that you are split 6-6, or 8-4, or whatever your vote happens to be.

7th Circuit Pattern Jury Instructions, 7.01 (Jury Deliberations).

INSTRUCTION NO. 59

Verdict forms have been prepared for you. You will take these forms with you to the jury room.

When you have reached unanimous agreement, your foreperson will fill in, date, and sign the verdict form. Each of you will sign it.

Advise the court security officer once you have reached a verdict. When you come back to the courtroom, I will read the verdict aloud.

INSTRUCTION NO. 60

After reaching your verdict on Count One, conspiracy to commit racketeering, if you find the defendant guilty, there are additional questions that you will need to consider and indicate your response on the verdict form for the questions relating to Count One.

The fourth superseding indictment alleges that the pattern of racketeering activity includes acts involving murder. If you found the defendant guilty of Count One, as indicated on the verdict form for the defendant, you need to determine whether, as part of the pattern of racketeering activity, the defendant committed the murder of Luis Ortiz, the murder of Michael Sessum, the murder of Miguel Mejias, the murder of Harris Brown, the murder of Miguel Colon, or the murder of Latroy Howard.

The fourth superseding indictment further alleges that the pattern of racketeering activity includes acts involving narcotics trafficking. If you find the defendant guilty of Count One, you need to determine whether as part of the pattern of racketeering activity, he conspired to distribute and possess with intent to distribute the quantities of the drugs listed on the verdict form.

INSTRUCTION NO. 61

If you find the defendant guilty of the offense charged in Count Two, the drug conspiracy, you must then determine the object or objects of the conspiracy that you unanimously find the government has proven the defendant guilty of beyond a reasonable doubt. You will see on the verdict form a question regarding the objects of the conspiracy for you to answer.

You will then see on the verdict form questions concerning the amount of narcotics involved in the offense charged in Count Two. You should consider these questions regarding the quantity of narcotics involved only if you have found that the government has proven the defendant guilty of the offense charged in Count Two.

INSTRUCTION NO. 62

The verdict must represent the considered judgment of each juror. Your verdict, whether it is guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with each other, express your own views, and listen to your fellow jurors' opinions. Discuss your differences with an open mind. Do not hesitate to re-examine your own view 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 just because of the opinions of your fellow jurors or just so that there can be a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence. You should deliberate with the goal of reaching an agreement that 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.