

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 2:13-cr-111
)	
ANTHONY LAVIENA,)	
)	
Defendant.)	

JURY INSTRUCTIONS

Dated: May 3, 2017.

s/ Philip P. Simon
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 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 Mr. Laviena 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 Mr. Laviena are in a document called the indictment. You will have a copy of the indictment during your deliberations.

Count Five of the indictment charges Mr. Laviena with murder in aid of racketeering. Count Six of the indictment charges Mr. Laviena with murder resulting from the use and carrying of a firearm during an in relation to a crime of violence. Mr. Laviena has pleaded not guilty to both charges.

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

Instruction No. 3

Mr. Laviena is presumed innocent of both 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 Mr. Laviena is guilty as charged.

The government has the burden of proving every element of the crimes charged beyond a reasonable doubt. This burden of proof stays with the government throughout the case.

Mr. Laviena is not 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 the stipulation 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 or present evidence. You may not consider in any way the fact that Mr. Laviena did not testify or present evidence. 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

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 trial only to help you decide how believable the witnesses' 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. 11

You have heard testimony from witnesses Deandra Joshua, Jesus Fuentes, Rodney King, and Frank Perez, each of whom was promised certain benefits in return for his testimony and cooperation with the government.

Deandra Joshua, Jesus Fuentes and Rodney King stated that they were involved in the crimes Mr. Laviena is charged with committing, and Jesus Fuentes and Rodney King admitted to lying under oath. In addition, Deandra Joshua pleaded guilty to one of the crimes Mr. Laviena is charged with committing.

You may not consider Deandra Joshua's guilty plea as evidence against Mr. Laviena.

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

Instruction No. 12

You have heard testimony that Mr. Laviena committed crimes other than the ones charged in the indictment. Before using this evidence, you must decide whether it is more likely than not that Mr. Laviena did these other crimes. If you decide that he did, then you may consider this evidence to help you decide whether Mr. Laviena maintained or increased his position in the Two Six Nation after the murder of Mr. Guzman.

You may consider this evidence only for that limited purpose. You may not consider it for any other purpose.

Keep in mind that Mr. Laviena is on trial here for murder in aid of racketeering and murder resulting from the use and carrying of a firearm during and in relation to a crime of violence, not for the other crimes.

Instruction No. 13

You have heard testimony of an identification of a person. 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 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 Mr. Laviena is the person who committed the crimes that are charged.

Instruction No. 14

You have heard testimony by Lieutenant Henry Hatch, who gave opinions and testimony about cartridge casing tool marks, and by Dr. Mitra Kalekar, who gave opinions and testimony about the cause of death of Alberto Guzman. You do not have to accept these witness's opinions or testimony. You should judge their 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 the witness's qualifications, how each reached his or her opinions, and the factors I have described in Instruction No. 9 for determining the believability of testimony.

Instruction No. 15

Certain records were shown to you to help explain other evidence that was admitted, specifically, records from the autopsy of Alberto Guzman. These records are not themselves evidence or proof of any facts, so you will not have them during your deliberations.

Instruction No. 16

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. 17

The indictment charges that the crimes happened “on or about” October 6, 1999. The government must prove that the crimes happened reasonably close to that date. The government is not required to prove that the crimes happened on that exact date.

Instruction No. 18

Mr. Laviena 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. 19

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 Mr. Laviena acted knowingly, you may consider all of the evidence, including what Mr. Laviena did or said.

Instruction No. 20

Count Five charges Mr. Laviena with the murder of Alberto Guzman in aid of racketeering. In order for you to find Mr. Laviena guilty of this charge, the government must prove each of the following five elements beyond a reasonable doubt:

1. The Two Six was an enterprise; and
2. The Two Six engaged in, or the activities of the Two Six affected, interstate or foreign commerce; and
3. The Two Six engaged in racketeering activity; and
4. Mr. Laviena committed the murder of Alberto Guzman, in violation of the laws of Indiana; and
5. Mr. Laviena's purpose in committing the murder was to maintain or increase his position in the Two Six.

If you find from your consideration of all of the evidence that each of these elements has been proven beyond a reasonable doubt, then you should find Mr. Laviena guilty of Count Five.

If, on the other hand, you find from your consideration of all of the evidence that any of these elements has not been proven beyond a reasonable doubt, then you should find Mr. Laviena not guilty of Count Five.

Instruction No. 21

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 Two Six was the enterprise charged, but it does not need to prove each and every allegation in the indictment about the enterprise or the manner in which the enterprise operated.

Instruction No. 22

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 Two Six 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 Two Six made, purchased, sold or moved goods or services that had their origin or destination outside the states in which the enterprise was located or (b) that the actions of the Two Six 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 Two Six 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 Mr. Laviena engaged in interstate commerce, or that the acts of Mr. Laviena affected interstate commerce.

Instruction No. 23

The term “racketeering activity” means certain state and federal crimes and includes narcotics trafficking in violation of federal law and murder in violation of state law.

To prove that the Two Six “engaged in racketeering activity,” the government must show some nexus between the Two Six and the racketeering activity being conducted by its members or associates. The element is satisfied if a member or associate of the Two Six committed racketeering activity on behalf of or in connection with the Two Six. It is for you to determine whether the Two Six engaged in these activities as charged.

I will now instruct you on the elements of the six offenses listed in the indictment as racketeering activity. The government must prove beyond a reasonable doubt that the Two Six were engaged in at least one of these crimes.

Possession with Intent to Distribute (21 U.S.C. § 841)

Under federal law, a person commits the crime of possession with intent to distribute a controlled substance when:

1. A person knowingly possessed a controlled substance; and
2. That person intended to distribute the substance to another person; and
3. That person knew the substance was some kind of controlled substance.

Conspiracy to Possess with Intent to Distribute and Distribute (21 U.S.C. § 846)

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 goals were not accomplished.

In deciding whether a conspiracy 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, a person 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 goals of the conspiracy were to be accomplished. The government must prove beyond a reasonable doubt that the person was aware of the illegal goals of the conspiracy and knowingly joined the conspiracy.

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

Under federal law, a person commits the crime of conspiracy to

possess with intent to distribute a controlled substance when:

1. The conspiracy existed; and
2. A person knowingly became a member of the conspiracy with an intent to advance the conspiracy.

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

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

1. The person knowingly or intentionally
2. killed
3. an individual.

Attempted Murder (Indiana Code 35-41-5-1)

Under Indiana law, a person commits an attempted murder when:

1. The person, acting with the specific intent to kill another person
2. Did an action
3. Which constituted a substantial step toward committing the murder.

Conspiracy (Indiana Code 35-41-5-2)

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

1. The person agreed with another person to commit a crime,
2. With the intent to commit the crime, and
3. The person or the other person performed an overt act in furtherance of the agreement.

Aiding, Inducing or Causing an Offense (Indiana Code 35-41-2-4)

Under Indiana law, a person aids, induces or causes an offense

when:

1. The person knowingly or intentionally
2. Aided, or induced, or caused
3. Another to commit the offense of murder, as previously defined, and
4. By assisting in, bringing about, or ordering the commission of the offense.

Instruction No. 24

Marijuana, cocaine, and heroin are all controlled substances.

Instruction No. 25

Mr. Laviena has committed the offense of murder in violation of Indiana law if he:

1. knowingly or intentionally
2. killed
3. Alberto Guzman.

Instruction No. 26

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

Instruction No. 27

A defendant's presence at the scene of a crime and knowledge that a crime is being committed is not sufficient by itself to establish the defendant's guilt.

A defendant's association with persons involved in a crime is not sufficient by itself to prove his participation in the crime.

Instruction No. 28

In determining whether Mr. Laviena's purpose was to "maintain or increase" his position in the Two Six, you should give those words their ordinary meaning. The government does not have to prove that Mr. Laviena's only or main motive in committing the murder was to maintain or increase his position in the Two Six. It is sufficient if you find that Mr. Laviena committed the murder because he knew it was expected of him by reason of his membership in the Two Six or that he committed a murder in furtherance of that membership.

Instruction No. 29

Count Six charges Mr. Laviena with using a firearm during and in relation to a crime of violence, namely, murder in aid of racketeering as set forth in Count Five. In order for you to find Mr. Laviena guilty of this charge, the government must prove each of the following three elements beyond a reasonable doubt:

1. Mr. Laviena committed the crime of murder in aid of racketeering as charged in Count Five; and
2. Mr. Laviena knowingly used a firearm during and in relation to that crime; and
3. Mr. Laviena unlawfully and with malice aforethought caused the death of Alberto Guzman through the use of a firearm.

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 Mr. Laviena guilty.

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

Instruction No. 30

I already instructed you on what it means to knowingly aid, counsel, command, induce, or procure the commission of an offense in Instruction No. 26. That instruction should be applied in Count Six as well.

Instruction No. 31

The word “during” as used in these instructions means at any point within the offense charged in Count Five.

Instruction No. 32

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.

Instruction No. 33

To kill with “malice aforethought” means to kill another person willfully, deliberately, or intentionally, and with premeditation.

Premeditation means with planning or deliberation. The law does not specify or require any exact period of time that must pass between the formation of the intent to kill and the killing itself. It must be long enough, after forming the intent to kill, for the killer to have been fully conscious of that intent.

Instruction No. 34

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, such as cell phone, smart phone, iPhone, computer, text messaging, instant messaging, the internet, or services like Facebook, Twitter, 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.

Instruction No. 35

A verdict form has been prepared for you. You will take this form 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. 36

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.