

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

CR 06-538 JH

MARY HELEN QUAINANCE,

Defendant.

**DEFENDANT MARY QUAINANCE'S**  
**REQUESTED JURY INSTRUCTIONS**

COMES NOW the Defendant Mary Quaintance, by and through her attorney John F. Robbenhaar, and submits the following requested jury instructions.

Respectfully submitted:

*Filed Electronically*  
JOHN F. ROBBENHAAR  
Attorney for Mary Helen Quaintance  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 4, 2008 I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing: LUIS MARTINEZ, Assistant U.S. Attorney; JERRY DANIEL HERRERA, Attorney at Law.

*Filed Electronically*  
JOHN F. ROBBENHAAR

DEFENDANT MARY QUAINANCE'S REQUESTED INSTRUCTION No. 1

**NON-TESTIFYING DEFENDANT**

The defendant Mary Quaintance did not testify and I remind you that you cannot consider her decision not to testify as evidence of guilt. You must understand that the Constitution of the United States grants to a defendant the right to remain silent. That means the right not to testify. That is a constitutional right in this country, it is very carefully guarded, and you must not presume or infer guilt from the fact that a defendant does not take the witness stand and testify or call any witnesses.

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10<sup>th</sup> Cir. Pattern Instruction 1.08.1

GIVEN \_\_\_\_\_

REFUSED \_\_\_\_\_

DEFENDANT MARY QUAINANCE'S REQUESTED INSTRUCTION No. 2

**ACTUAL OR CONSTRUCTIVE POSSESSION**

The law recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over an object or thing, at a given time, is then in actual possession of it.

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

More than one person can be in possession of an object if each knows of its presence and has the power to control it.

A defendant has joint possession of an object when two or more persons share actual or constructive possession of it. However, merely being present with others who have possession of the object does not constitute possession.

In the situation where the object is found in a place (such as a room or car) occupied by more than one person, you may not infer control over the object based solely on joint occupancy. Mere control over the place in which the object is found is not sufficient to establish constructive possession. Instead, in this situation, the government must prove some connection between the particular defendant and the object.

In addition, momentary or transitory control of an object is not possession. You should not find that the defendant possessed the object if he or she possessed it only momentarily, or did not know that he or she possessed it.

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10<sup>th</sup> Cir. Pattern Jury Instruction 1.31

GIVEN \_\_\_\_\_

REFUSED \_\_\_\_\_

DEFENDANT MARY QUAINANCE'S REQUESTED INSTRUCTION No. 3

**AID AND ABET 18 U.S.C. § 2(A)**

Each count of the indictment also charges a violation of 18 U.S.C. section 2, which provides that: "Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

This law makes it a crime to intentionally help someone else commit a crime. To find the defendant Mary Quaintance guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

*First:* someone else committed the charged crime, and

*Second:* the defendant Mary Quaintance intentionally associated himself in some way with the crime and intentionally participated in it as she would in something she wished to bring about. This means that the government must prove that the defendant Mary Quaintance consciously shared the other person's knowledge of the underlying criminal act and intended to help him.

The defendant Mary Quaintance need not perform the underlying criminal act, be present when it is performed, or be aware of the details of its commission to be guilty of aiding and abetting. But a general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of a crime and knowledge that a crime is being committed are also not sufficient to establish aiding and abetting.

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10<sup>th</sup> Cir. Pattern Jury Instruction 2.06

GIVEN

REFUSED

DEFENDANT MARY QUAINANCE'S REQUESTED INSTRUCTION No. 4

**CONTROLLED SUBSTANCES—CONSPIRACY 21 U.S.C. § 846**

The Defendant Mary Quaintance is charged in count 1 with a violation of 21 U.S.C. section 846.

This law makes it a crime for anyone to conspire with someone else to violate federal laws pertaining to controlled substances. In this case, the defendant Mary Quaintance is charged with conspiracy to possess with the intent to distribute a controlled substance, to wit: marijuana.

To find the defendant Mary Quaintance guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

*First:* two or more persons agreed to violate the federal drug laws;

*Second:* the defendant Mary Quaintance knew the essential objective of the conspiracy;

*Third:* the defendant Mary Quaintance knowingly and voluntarily involved himself in the conspiracy; and

*Fourth:* there was interdependence among the members of the conspiracy; that is, the members, in some way or manner, intended to act together for their shared mutual benefit within the scope of the conspiracy charged.

*Fifth:* the overall scope of the conspiracy involved 100 kilograms or more of a substance containing a detectable amount of marijuana.

**Conspiracy—Agreement**

A conspiracy is an agreement between two or more persons to accomplish an unlawful purpose. It is a kind of "partnership in criminal purposes" in which each member becomes the agent or partner of every other member. Once a person becomes a member of a conspiracy, he is

held legally responsible for the acts of the other members done in furtherance of the conspiracy, even though he was not present or aware that the acts were being committed.

Mere similarity of conduct among various persons, and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

The evidence in the case need not show that the members entered into any express or formal agreement. Nor is it necessary that the evidence show that the members stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished. In order to establish proof that a conspiracy existed, the evidence must show beyond a reasonable doubt that the members in some way or manner, or through some contrivance, expressly or impliedly came to a mutual understanding to try to accomplish a common and unlawful plan.

### **Evidence**

The evidence in the case need not establish that all the means or methods set forth in the indictment were agreed upon to carry out the alleged conspiracy; nor that all means or methods, which were agreed upon, were actually used or put into operation; nor that all of the persons charged to have been members of the alleged conspiracy were members. Rather, the evidence in the case must establish beyond a reasonable doubt that the alleged conspiracy was knowingly formed; and that one or more of the means or methods described in the indictment were agreed upon to be used, in an effort to effect or accomplish some object or purpose of the conspiracy, as charged in the indictment; and that two or more persons, including the defendant, were knowingly members of the conspiracy.

### **Membership in Conspiracy**

If you conclude from the evidence beyond a reasonable doubt that a conspiracy as charged did exist, then you must next determine whether the defendant Mary Quaintance was a member of that conspiracy; that is, whether the defendant Mary Quaintance participated in the conspiracy with knowledge of its unlawful purposes and in furtherance of its unlawful objectives. In determining whether the defendant Mary Quaintance was a member of the conspiracy, the jury must consider only his acts and statements. The defendant Mary Quaintance cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that she was one of its members.

### **Interdependence**

To be a member of the conspiracy, the defendant need not know all of the other members or all of the details of the conspiracy, nor the means by which the objects were to be accomplished. Each member of the conspiracy may perform separate and distinct acts. It is necessary, however, that for the defendant to be a member of the conspiracy, the government must prove beyond a reasonable doubt that she was aware of the common purpose and was a willing participant with the intent to advance the purposes of the conspiracy. In other words, while a defendant need not participate in all the acts or statements of the other members of the conspiracy to be bound by them, the acts or statements must be interdependent so that each member of the conspiracy depends upon the acts and statements of the other conspirators to make the conspiracy succeed.

### **Extent of Participation**

The extent of a defendant's participation in the conspiracy is not relevant to whether he or

she is guilty or not guilty. A defendant may be convicted as a conspirator even though he or she plays a minor part in the conspiracy. A financial stake, if any, in the venture is a factor that may be considered in determining whether a conspiracy existed and whether the defendant was a member of it.

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10<sup>th</sup> Cir. Pattern Jury Instructions 2.87

GIVEN \_\_\_\_

REFUSED \_\_\_\_

DEFENDANT MARY QUAINANCE'S REQUESTED INSTRUCTION No. 5

**MERE PRESENCE**

Proof that the Defendant Mary Quaintance may have known about the crime before it was committed, or while it was being committed, is not enough for you to find Mrs. Quaintance guilty. Similarly, mere presence at the places where a crime is committed—being in the wrong place at the wrong time—is not enough for you to find the defendant Mary Quaintance guilty. You may consider mere presence and a Defendant's knowledge of a crime in deciding whether the Government has proved that the defendant Mary Quaintance conspired in the crime; but without more, mere presence and knowledge are not enough.

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*U.S. v. Ross*, 216 F.3d 1089 (10<sup>th</sup> Cir. 2000) (unpubl.)

GIVEN \_\_\_\_

REFUSED \_\_\_\_

DEFENDANT MARY QUAINANCE'S REQUESTED INSTRUCTION No. 6

**CONSPIRACY**

Mere similarity of conduct among two or more persons, and the fact that they may have associated with each other, and may have traveled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

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*U.S. v. Dozal*, 173 F.3d 787, 796 (10<sup>th</sup> Cir. 1999)

GIVEN \_\_\_\_  
REQUESTED \_\_\_\_