

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 06-538 JH

DANUEL QUAINTANCE,  
MARY HELEN QUAINTANCE,

Defendants.

**REQUESTED JURY INSTRUCTIONS  
OF DANUEL QUAINTANCE AND MARY HELEN QUAINTANCE**

The Defendants, Danuel Quaintance and Mary Helen Quaintance, by and through their respective attorneys, Jerry Daniel Herrera and John Robbenhaar, hereby submit to the Court and counsel for the government, their requested jury instructions in the above-referenced cause.\_\_\_\_\_

/s/ electronically signed

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I hereby certify that a true and correct copy of the foregoing document was electronically filed with the U.S. District Court and a copy sent to the Office of the United States Attorney on this 04<sup>th</sup> day of August, 2008.

JURY INSTRUCTION NO: \_\_\_\_\_

The testimony of a drug abuser must be examined and weighed  
by the jury

with greater caution than the testimony of a witness who does not abuse  
drugs.

Timothy Jason Kripner may be considered to be an abuser of  
drugs.

You must determine whether the testimony of that witness has  
been affected by the use of drugs or the need for drugs.

JURY INSTRUCTION NO: \_\_\_\_\_

I remind you that it is your job to decide whether the government has proved the guilt of the defendant beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to the witness’s testimony. An important part of your job will be making judgment about the testimony of the witnesses [including the defendant] who testified in this case. You should think about the testimony of each witness you have heard and decide whether you believe all or any part of what each witness had to say, and how important that testimony was. In making that decision, I suggest that you ask yourself a few questions: Did the witness impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome in this case? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he/she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness’s testimony differ from the testimony of other witnesses?

When weighing the conflicting testimony, you should consider whether the discrepancy has to do with a material fact or with an unimportant detail. And you should keep in mind that innocent misrecollection - is not uncommon.

The defendant did not testify and I remind you that you cannot consider his decision not to testify as evidence of guilt. I want you to clearly understand, please, that the Constitution of the United States grants to a defendant the right to remain silent. That means the right not to testify or

call any witnesses. That is a constitutional right in this country, it is very carefully guarded and you should understand that no presumption of guilt may be raised and no inference of any kind may be drawn from the fact that a defendant does not take the witness stand and testify or call any witnesses.

In reaching a conclusion on particular point, or ultimately in reaching a verdict in this case, do not make any decisions simply because there were more witnesses on one side than on the other.

JURY INSTRUCTION NO: \_\_\_\_\_

I remind you that it is your job to decide whether the government has proved the guilt of the defendant beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to the witness’s testimony. An important part of your job will be making judgment about the testimony of the witnesses [including the defendant] who testified in this case. You should think about the testimony of each witness you have heard and decide whether you believe all or any part of what each witness had to say, and how important that testimony was. In making that decision, I suggest that you ask yourself a few questions: Did the witness impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome in this case? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he/she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness’s testimony differ from the testimony of other witnesses?

When weighing the conflicting testimony, you should consider whether the discrepancy has to do with a material fact or with an unimportant detail. And you should keep in mind that innocent misrecollection - is not uncommon.

The testimony of the defendant should be weighed and his credibility evaluated in the same way as that of any other witness.

In reaching a conclusion on particular point, or ultimately in reaching a verdict in this case, do not make any decisions simply because

there were more witnesses on one side than on the other.

JURY INSTRUCTION NO: \_\_\_\_\_

\_\_\_\_\_The defendant did not testify and I remind you that you cannot consider his decision not to testify as evidence of guilt. You must understand that the Constitution of the United State 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.

JURY INSTRUCTION NO: \_\_\_\_\_

\_\_\_\_\_ You have heard testimony of Timothy Jason Kripner. You have also heard that, before this trial, he made a statement that may be different from his testimony here in court.

This earlier statement was brought to your attention only to help you decide how believable his testimony in this trial was. You cannot use it as proof of anything else. You can only use it as one way of evaluating his testimony in court.



JURY INSTRUCTION NO: \_\_\_\_\_

\_\_\_\_\_The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. A prior conviction does not mean that a person is incompetent to testify, but is merely one circumstance that you may consider in determining the credibility of the witness. You may decide how much weight to give any prior conviction that was used to impeach a witness.

JURY INSTRUCTION NO: \_\_\_\_\_

\_\_\_\_\_ An accomplice is someone who joined with another person in committing a crime, voluntarily and with common intent. An accomplice is not prohibited from testifying because of participation in the crime charged. On the contrary, the testimony of an accomplice may be received in evidence and considered by you, even though it is not supported by other evidence. You may decide how much weight it should have.

You are to keep in mind, however, that accomplice testimony should be received with caution and considered with great care. You should not convict a defendant based on the unsupported testimony of an alleged accomplice, unless you believe the unsupported testimony beyond a reasonable doubt.

INFORMANT

An informant is someone who provides evidence against someone else for a personal reason or advantage. You must examine and weigh an informant's testimony with greater care than the testimony of an ordinary witness. You must determine whether the informant's testimony has been affected by self-interest, by an agreement he has with the government, by his own interest in the outcome of the case, or by prejudice against the defendant.

IMMUNITY

One who testifies under a grant of immunity (a promise from the government that he will not be prosecuted) is not prohibited from testifying by reason of the government's promise. His testimony may be received in evidence and you may consider it even though it is not supported by other evidence. You should consider testimony given under a grant of immunity with greater care and caution than the testimony of an ordinary witness. You

should consider whether testimony under a grant of immunity may be colored to further the witness's own interest. This is because a witness who realizes that he may benefit by incriminating another may have a motive to testify falsely.

On the other hand, you should also consider that an immunized witness can be prosecuted for perjury for making a false statement. After considering these things, you may give testimony given under a grant of immunity such weight as you feel it deserves. \_\_\_\_\_

JURY INSTRUCTION NO: \_\_\_\_\_

The government called as one of its witnesses an alleged accomplice, who was named as a co-defendant in the indictment. The government has entered into a plea agreement with the co-defendant, providing for the dismissal of some charges and a recommendation of a lesser sentence that the co-defendant would otherwise likely receive. Plea bargaining is lawful and proper, and the rules of this court expressly provide for it.

An alleged accomplice, including one who has entered into a plea agreement with the government, is not prohibited from testifying. On the contrary, the testimony of an alleged accomplice may, by itself, support a guilty verdict. You should receive this type of testimony with caution and weigh it with great care. You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless, you believe that testimony beyond a reasonable doubt. The fact that an accomplice has entered a guilty plea to the offense charged is not evidence of the guilt of any other person.

JURY INSTRUCTION NO: \_\_\_\_\_

\_\_\_\_\_

You must not draw any inference of guilt from the fact that the defendant did not testify in this case, nor should this fact be discussed by you or enter into your deliberations in any way.

JURY INSTRUCTION NO: \_\_\_\_\_

The law presumes the defendant to be innocent unless and until you are satisfied beyond a reasonable doubt of his guilt.

The burden is always on the state to prove guilt beyond a reasonable doubt. It is not required that the state prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense - the kind of doubt that would make a reasonable person hesitate to act in the graver and more important affairs of life.

JURY INSTRUCTION NO: \_\_\_\_\_

Proof of \_\_\_\_\_ (*set forth presumed fact*) is an essential element of \_\_\_\_\_ (*set forth crime*) as defined elsewhere in these instructions. The burden is on the state to prove \_\_\_\_\_ (*set forth presumed fact*) beyond a reasonable doubt.

In this case if you find that \_\_\_\_\_ (*here state basic fact or facts on which presumption rests*) [has] [have] been proved, you may but are not required to find that \_\_\_\_\_ (*presumed fact*) has been proved. You must consider all of the evidence in making your determination. In order to find the defendant guilty of \_\_\_\_\_ (*set forth offense charged*), [as charged in Count \_\_\_\_\_]<sup>2</sup>, you must be convinced beyond a reasonable doubt that the defendant \_\_\_\_\_ (*set forth presumed fact*).

JURY INSTRUCTION NO:\_\_\_\_\_

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agrees. Your verdict must be unanimous.

It is your duty to consult with one another and try to reach an agreement. However, you are not required to give up your individual judgment. Each of you must decide the case for yourself, but you must do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own view and change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the purpose of reaching a verdict.

You are judges - judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.