

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**DANUEL DEAN QUAINANCE and  
MARY HELEN QUAINANCE,**

Defendants.

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CRIMINAL NO. 06-538 JCH

GOVERNMENT'S REQUESTED JURY INSTRUCTIONS

The United States respectfully requests the Court to include the following instructions in its charge to the jury, and requests permission to submit such additional instructions as may become appropriate during trial.

Respectfully submitted,

GREGORY J. FOURATT  
United States Attorney

**Electronically filed by**  
LUIS A. MARTINEZ  
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I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to opposing counsel of record, on this date.

**Electronically filed 8/5/2008**  
LUIS A. MARTINEZ  
Assistant United States Attorney

GOVERNMENT'S REQUESTED INSTRUCTION NO.   1  

The defendants are on trial before you upon a Superseding Indictment brought by the Grand Jury charging that:

COUNT 1

Beginning on or about February 13, 2006, up to and including February 22, 2006, in Hidalgo County, in the State and District of New Mexico, and elsewhere, the defendants, **DANUEL DEAN QUAINANCE and MARY HELEN QUAINANCE**, did unlawfully, knowingly and intentionally combine, conspire, confederate and agree together and with each other and with other persons whose names are known and unknown to the grand jury to commit the following offense against the United States, to wit: Possession with intent to distribute 100 kilograms and more of Marijuana, a Schedule I controlled substance, contrary to 21 U.S.C. § 841 (a)(1) and 21 U.S.C. § 841 (b)(1)(B).

In violation of 21 U.S.C. § 846.

COUNT 2

On or about February 22, 2006, in Hidalgo County, in the State and District of New Mexico, the defendants, **DANUEL DEAN QUAINANCE and MARY HELEN QUAINANCE**, did unlawfully, knowingly and intentionally possess with intent to distribute 50 kilograms and more of Marijuana, a Schedule I controlled substance.

In violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C) and 18 U.S.C. § 2.

GOVERNMENT'S REQUESTED INSTRUCTION NO.   2  

The defendants are 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 defendants are charged with conspiracy to distribute 100 kilograms and more of marijuana.

To find the defendants 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 defendants knew the essential objective of the conspiracy;

*Third:* the defendants knowingly and voluntarily involved themselves 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 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 defendants, 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 defendants were members of that conspiracy; that is, whether the defendants participated in the conspiracy with knowledge of its unlawful purposes and in furtherance of its unlawful objectives. In determining whether the defendants were members of the conspiracy, the jury must consider only their acts and statements. The defendants cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that they were each 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 defendants to be members of the conspiracy, the government must prove beyond a reasonable doubt that they were each 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 is guilty or not guilty. A defendant may be convicted as a conspirator even though he plays a minor part in the conspiracy. His or her 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.

10th Cir. Criminal Pattern Jury Instruction, 2.87, p. 307.

GOVERNMENT'S REQUESTED INSTRUCTION NO.   3  

The defendants are charged in Count 2 with a violation of 21 U.S.C. section 841(a)(1).

This law makes it a crime to possess a controlled substance with the intent to distribute it.

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

*First:* the defendant knowingly or intentionally possessed marijuana as charged;

*Second:* the defendant possessed the substance with the intent to distribute it; and

*Third:* the weight of the marijuana defendant possessed was at least 50 kilograms as charged.

Marijuana is a controlled substance within the meaning of the law.

To "possess with intent to distribute" means to possess with intent to deliver or transfer possession of a controlled substance to another person, with or without any financial interest in the transaction.

10th Cir. Criminal Pattern Jury Instruction, 2.85, p. 301.

GOVERNMENT'S REQUESTED INSTRUCTION NO.   4  

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 possessed it only momentarily, or did not know that he possessed it.

10th Cir. Criminal Pattern Jury Instruction, 1.31, p. 50.



GOVERNMENT'S REQUESTED INSTRUCTION NO.   5  

A separate crime is charged against one or more of the defendants in each count of the indictment. You must separately consider the evidence against each defendant on each count and return a separate verdict for each defendant.

Your verdict as to any one defendant or count, whether it is guilty or not guilty, should not influence your verdict as to any other defendants or counts.

10th Cir. Criminal Pattern Jury Instruction, 1.22, p. 37.

GOVERNMENT'S REQUESTED INSTRUCTION NO.   6  

Evidence relating to any statement attributed to a defendant alleged to have been made after the commission of the crime (or crimes) charged in this case but not made in court, should always be considered by you with caution and weighed with care. Any such statements should be disregarded entirely unless the other evidence in the case convinces you by a preponderance of the evidence that the statement was made knowingly and voluntarily.

In determining whether any such statement was knowingly and voluntarily made, you should consider, for example, the age, gender, training, education, occupation, and physical and mental condition of the defendant, and any evidence concerning his treatment while under interrogation if the statement was made in response to questioning by government officials, and all the other circumstances in evidence surrounding the making of the statement.

If, after considering all this evidence, you conclude by a preponderance of the evidence that a defendant's statement was made knowingly and voluntarily, you may give such weight to the statement as you feel it deserves under all the circumstances.

Of course, any such statement should not be considered in any way whatsoever as evidence with respect to any other defendant on trial.

10th Cir. Criminal Pattern Jury Instruction, 1.26, p. 43 (modified).

GOVERNMENT'S REQUESTED INSTRUCTION NO.   7  

During the trial you heard the testimony of several expert witnesses who expressed opinions concerning marijuana. In some cases, such as this one, scientific, technical, or other specialized knowledge may assist the jury in understanding the evidence or in determining a fact in issue. A witness who has knowledge, skill, experience, training or education, may testify and state an opinion concerning such matters.

You are not required to accept such an opinion. You should consider opinion testimony just as you consider other testimony in this trial. Give opinion testimony as much weight as you think it deserves, considering the education and experience of the witness, the soundness of the reasons given for the opinion, and other evidence in the trial.

10th Cir. Criminal Pattern Jury Instruction, 1.17, p. 32 (modified).

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 Plaintiff, )  
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 vs. ) CRIMINAL NO. 06-538 JCH  
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 **DANUEL DEAN QUAINANCE and** )  
 **MARY HELEN QUAINANCE,** )  
 )  
 Defendants. )

VERDICT

We, the Jury, find the Defendant, DANUEL DEAN QUAINANCE \_\_\_\_\_  
(Guilty or Not Guilty)  
of the charge of Conspiracy to Possess with Intent to Distribute 100 kilograms and more  
of marijuana, as charged in Count 1 of the Indictment.

We, the Jury, find the Defendant, DANUEL DEAN QUAINANCE \_\_\_\_\_  
(Guilty or Not Guilty)  
of the charge of Possession with Intent to Distribute 50 kilograms and more of marijuana,  
as charged in Count 2 of the Indictment.

Dated this \_\_\_\_\_ day of August, 2008.

\_\_\_\_\_  
FOREPERSON

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

UNITED STATES OF AMERICA, )  
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 Plaintiff, )  
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 vs. ) CRIMINAL NO. 06-538 JCH  
 )  
 **DANUEL DEAN QUAINANCE and** )  
 **MARY HELEN QUAINANCE,** )  
 )  
 Defendants. )

VERDICT

We, the Jury, find the Defendant, MARY HELEN QUAINANCE \_\_\_\_\_  
(Guilty or Not Guilty)  
of the charge of Conspiracy to Possess with Intent to Distribute 100 kilograms and more  
of marijuana, as charged in Count 1 of the Indictment.

We, the Jury, find the Defendant, MARY HELEN QUAINANCE \_\_\_\_\_  
(Guilty or Not Guilty)  
of the charge of Possession with Intent to Distribute 50 kilograms and more of marijuana,  
as charged in Count 2 of the Indictment.

Dated this \_\_\_\_\_ day of August, 2008.

\_\_\_\_\_  
FOREPERSON