

2012 CHANGES TO THE MODEL CRIMINAL JURY INSTRUCTIONS

CHAPTER 1

Instruction 1.01 (Preliminary Instructions to Jury Panel):

Comment revised to discuss the doctrine of “implied bias” (that certain categories of potential jurors are biased as a matter of law), *see, e.g., United States v. Mitchell*, 690 F.3d 137 (3d Cir. 2012).

Instruction 1.03 (Conduct of the Jury):

Instruction revised to parallel language suggested in the Proposed Model Jury Instructions regarding The Use of Electronic Technology to Conduct Research on or Communicate about a Case, prepared by the Committee on Court Administration and Case Management of the Judicial Conference of the United States (latest version June 2012, available at <http://www.fjc.gov>).

CHAPTER 2

Instruction 2.22 Witness Who Has Pleaded Guilty to the Same or Related Charges

Instruction 2.23 Defendant's Prior Bad Acts or Crimes (F.R.E. 404(b))

CHAPTER 3

Instruction 3.01 (Role of Jury):

Instruction revised to parallel language suggested in the Proposed Model Jury Instructions regarding The Use of Electronic Technology to Conduct Research on or Communicate about a Case, prepared by the Committee on Court Administration and Case Management of the Judicial Conference of the United States (latest version June 2012, available at <http://www.fjc.gov>).

Instructions 3.04 (Credibility of Witnesses) **and 3.05** (Not All Evidence, Not All Witnesses Needed):

Comments revised to suggest that the trial court may want to omit portions of these instructions if there is any concern that they would incorrectly suggest to the jury that the defendant has an obligation to present witnesses or evidence.

CHAPTER 4

Instruction 4.02 Stipulation of Fact

Instruction 4.16 Missing Witness

Instruction 4.19 Credibility of Witnesses - Witness Who Has Pleaded Guilty to Same or Related Offense, Accomplices, Immunized Witnesses, Cooperating Witnesses

Instruction 4.28 Defendant's Testimony

Instruction 4.29 Defendant's Prior Bad Acts or Crimes (F.R.E. 404(b))

Instruction 4.34 Silence in the Face of Accusation

Instruction 4.40 Impeachment of Defendant's Character Witness

CHAPTER 5

General Introduction to Mental State Instructions (Chapter 5):

Revised to discuss *United States v. Maury*, ___ F. 3d ___, 2012 WL 4074565 (3d Cir. 2012), holding that there is no need to instruct on mental states that do not meet the requirements of the statute defining the offense charged.

Instruction 5.01 (Proof Of Required State of Mind – Intentionally, Knowingly, Willfully):

Comment revised to explain that the trial court should be careful not to instruct that the jury can consider what the defendant failed to say, as discussed in *United States v. Waller*, 654 F.3d 430 (3d Cir. 2011) (citing this instruction).

Instruction 5.02 (Knowingly):

Comment revised to discuss *United States v. Maury*, ___ F. 3d ___, 2012 WL 4074565 (3d Cir. 2012), where the Third Circuit upheld the trial court's instruction on knowingly, citing the model instruction.

Instruction 5.03 (Intentionally):

Comment revised to explain that the trial court should be careful not to instruct that the jury can consider what the defendant failed to say, citing *United States v. Waller*, 654 F.3d 430 (3d Cir. 2011).

Instruction 5.06 (Willful Blindness [*Deliberate Ignorance*]):

Comment revised to include citation to *United States v. Bansal*, 663 F.3d 634, 669 (3d Cir. 2011) (willful blindness instruction warranted by the evidence).

Instruction 5.09 (Negligently):

Instruction changed from "criminal" or "gross" negligence standard to simple, civil negligence, based on the Third Circuit's decision in *United States v. Maury*, ___ F.3d ___, 2012 WL 4074565 (3d Cir. 2012). Former instruction included in Comment as alternative to be used if the statute defining the offense charged states a higher standard of negligence or there is other evidence that Congress intended a higher standard.

CHAPTER 6

Elements of Offenses

Instruction 6.18.152(1) Bankruptcy - Fraudulent Concealment of Assets - Elements of the Offense (18 U.S.C. § 152(1))

Instruction 6.18.371A (Conspiracy To Commit An Offense Against The United States Basic Elements (18 U.S.C. § 371)):

Instruction 6.18.371C (Conspiracy – Existence of an Agreement)

Comment revised to include citation to *United States v. Davis*, 458 Fed.Appx. 152 (3d Cir 2012) (non-precedential), holding evidence insufficient to prove existence of an agreement.

Instruction 6.18.666A1A Theft Concerning a Program Receiving Federal Funds (18 U.S.C. §666(a)(1)(A))

Instruction 6.18.666A1A-1 Theft Concerning a Program Receiving Federal Funds - Agent of Organization or Government Defined

Instruction 6.18.666A1B Solicitation of a Bribe by an Agent of a Program Receiving Federal Funds (18 U.S.C. §666(a)(1)(B))

Instruction 6.18.666A2 Bribery of an Agent of a Program Receiving Federal Funds (18 U.S.C. §666(a)(2))

Instruction 6.18.666A2-2 Bribery of an Agent - Corruptly with Intent to Influence Defined

Instruction 6.18.666A1A Theft Concerning a Program Receiving Federal Funds (18 U.S.C. §666(a)(1)(A))

Instruction 6.21.841-1 (Controlled Substances – Possession Defined):

Comment revised to include citation to *United States v. Bates*, 462 Fed. Appx. 244 (3d Cir. 2012) (non-precedential), holding evidence insufficient to prove constructive possession.

Instruction 6.21.841-5 (Controlled Substances – Intent to (*Manufacture*) (*Distribute*) Defined):

Comment revised to explain that the court should be careful not to instruct that the jury can consider what the defendant failed to say, citing *United States v. Waller*, 654 F.3d 430 (3d Cir. 2011), as discussed in the Comment to Instruction 5.01 (Proof Of Required State of Mind – Intentionally, Knowingly, Willfully).

Instruction 6.21.846B (Controlled Substances – Conspiracy to (*Distribute*) (*Possess with Intent to Manufacture / Distribute*) (*Manufacture*) (*Possess*) (21 U.S.C. § 846)):

Comment revised to include citation to *United States v. Claxton*, 685 F.3d 300 (3d Cir. 2012) (holding evidence sufficient to show that defendant knew he was participating in criminal conspiracy involving drugs), and to discuss “buyer-seller” instruction based on *United States v. Lewis*, 447 Fed. Appx. 310 (3d Cir. 2011), which rejected the defendant’s argument that the trial judge erred in not giving a requested “buy-sell” jury instruction.

Instruction 6.18.922G Felon In Possession of Firearm (18 U.S.C. § 922(g)) (non-bifurcated proceeding)

Instruction 6.18.922G-1 Felon In Possession of Firearm (18 U.S.C. § 922(g)) (bifurcated proceeding)

Instruction 6.18.922G-2 Proof of Prior Conviction

Instruction 6.18.924A Possession of a Firearm In Furtherance of Crime of Violence or Drug Trafficking Crime (18 U.S.C. § 924(c)(1))

Instruction 6.18.924A-1 “In Furtherance of” Defined

Instruction 6.18.924B Using or Carrying a Firearm During Any Crime of Violence or Drug Trafficking Crime (18 U.S.C. § 924(c)(1))

Instruction 6.18.1341-2 Mail, Wire, or Bank Fraud - Unanimity Required

Instruction 6.18.1341-3 Mail or Wire Fraud - Protected Interests: Honest Services

Instruction 6.18.1341-4 Mail or Wire Fraud – “Intent to Defraud” Defined

Instruction 6.18.1343-1 Wire Fraud - "Transmits by means of wire, radio, or television communication in interstate commerce" - Defined

Instruction 6.18.1512B Obstruction of Justice - Witness Tampering Through Intimidation, Threats, or Corrupt Persuasion (18 U.S.C. § 1512(b)(1) and (2))

Instruction 6.18.1951 Hobbs Act - Elements of the Offense (18 U.S.C. § 1951)

Instruction 6.18.1951-7 Hobbs Act - Affecting Interstate Commerce

Instruction 6.18.1956A Money Laundering - Elements of the Offense (18 U.S.C. §1956(a)(1))

Instruction 6.18.1956-3 Money Laundering - Proceeds of a Specified Unlawful Activity Defined

Instruction 6.18.1956-4 Money Laundering - Knowledge that Property Represents Proceeds of Some Form of Unlawful Activity Defined

Instruction 6.18.1956-5 Money Laundering - Intent to Promote, Intent to Conceal or Disguise, Intent to Avoid Reporting Requirement Defined

Instruction 6.26.7203 Failure to File a Tax Return - Elements of the Offense (26 U.S.C. § 7203)
The jury in such cases should be instructed that it may not consider the guilty plea and/or plea agreement as evidence that the defendant is guilty of the offenses with which he/she is charged, but rather that such evidence is offered only to allow the jury to assess the witness's credibility, to eliminate any concern that the defendant has been singled out for prosecution, or to explain how the witness possessed detailed first-hand knowledge regarding the events about which he or she testifies.

CHAPTER 8

Instruction 8.05 (Entrapment) Comment revised to include citations to *United States v. Tolentino*, 2012 WL 2581001 (3d Cir. 2012) (non-precedential opinion discussing the outrageous government conduct defense) and *United States v. Langforddavis*, 454 Fed. Appx. 34 (3d Cir. 2011) (non-precedential opinion discussing entrapment by estoppel).

CHAPTER 9

Instruction 9.02 Response to Jury Questions

Instruction 9.05 Deadlocked Jury - Return for Deliberations