

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL MIKULEWICZ,

Defendant.

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ORDER

07-CR-89-S

Attached for the parties' consideration are draft voir dire questions, jury instructions and a verdict form.

Entered this 22<sup>nd</sup> day of October, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER

Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff

v.

MICHAEL L. MIKULEWICZ,

Defendant.

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STATEMENT OF THE CASE  
AND VOIR DIRE

07-CR-89-S

Statement of the case: This is a criminal case, in which the defendant, Michael L. Mikulewicz, is charged with distributing methamphetamine, possessing methamphetamine with intent to distribute it, and with maintaining an establishment near Spooner, Wisconsin for the purpose of distributing and using methamphetamine.. The defendant has entered a plea of not guilty to the charges against him.

Have any of you heard of this case before today? Would this affect your ability to serve impartially as a juror in this case?

1. Scheduling: this case will begin today and conclude by this Wednesday. Are any of you actually unable to sit as jurors because of this schedule?

2. Is there anything about the nature of the charges in this case that might affect your ability to be impartial in this case?

3. The court reads Pattern Jury Instructions of the Seventh Circuit:

Presumption of Innocence. The defendant is presumed to be innocent of the charge. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome

unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty.

**Burden of Proof.** The government has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the government throughout the case. The defendant is not required to prove his innocence or to produce any evidence.

The defendant has an absolute right not to testify. The fact that the defendant does not testify cannot be considered by you in any way in arriving at your verdict.

Would any of you be unable or unwilling to follow these instructions?

4. Ask counsel to introduce themselves, the defendants and the case agent. Ask whether jurors know them.

5. Invite each juror, in turn, to rise, and provide the following information:

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse and any adult children.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows. [*continued on next page*]

Whether you have any bumper stickers on your car and what they say.

Whether you regularly listen to talk radio and if so, to which programs.

6. Do any of you in the jury box know each other from before today?

7. The establishment that defendant is alleged to have maintained for the purpose of distributing and using methamphetamine is a “gentleman’s club” in Trego, Wisconsin, near Spooner, named “The Jack of Diamonds.” Are any of you familiar with The Jack of Diamonds in Trego? [Side bar if necessary]. Would this affect your ability to be impartial in this case?

8. A “gentleman’s club” is one term used to describe a business that serves alcohol while women dance in various stages of undress. Is there anything about the nature of the business that defendant runs that would affect your ability to be impartial in this case? [Sidebar if necessary].

9. Have any of you, your relatives, or close friends ever been accused of, or convicted of any criminal offense, or any offense involving cocaine or marijuana? [Sidebar if necessary]. Would this affect your ability to be impartial in this case?

10. Have any of you, your relatives or close friends ever needed, sought, or obtained any sort of counseling or treatment for a problem related to alcohol or any other drug? [Sidebar if necessary]. Would this affect your ability to be impartial in this case?

11. Do any of you, your family or close friends work in a health related field which treats or counsels people who have problems related to alcohol or other drugs? Would this affect your ability to be impartial in this case?

12. Have any of you, your relatives or any close friends ever belonged to any group that is concerned in any way with marijuana, alcohol, or other drugs, either for or against them? What is the name of that group, and what is your involvement in it? Would this affect your ability to be impartial in this case?

13. Do any of you think that the drug laws in this country or the enforcement of the drug laws are either too harsh or too lenient?

14. Do any of you believe that a person charged with drug crimes is probably a dangerous person simply because he is charged with a drug crime?

15. Do any of you, by virtue of past dealings with the United States government, or for any reason, have any bias for or against the government in a criminal case?

16. Have any of you, your relatives, or close friends ever worked for the local, county, state, or federal government? Would this affect your ability to be impartial in this case?

17. Have any of you, your relatives, or close friends ever worked for, or had other professional contact with any law enforcement, investigative or security company or agency, or any prison? Would this affect your ability to be impartial in this case?

18. Would any of you judge the credibility of a witness who was a law enforcement officer or government employee differently from other witnesses solely because of his or her official position?

19. If the defendant were to choose to testify, would any of you judge his credibility differently from other witnesses solely because it was the defendant who was testifying?

20. Have any of you, your relatives, or close friends ever been the victim of any crime? Would this affect your ability to be impartial in this case?

21. Have any of you, your relatives, or close friends ever been a witness in a trial? Is there anything about this experience that might affect your ability to be impartial in this case?

22. Have any of you, your relatives, or close friends ever had any negative experience with any lawyer, any court, or any legal proceeding that would affect your ability to be impartial in this case?

23. How many of you have served previously as a juror in another case? Please tell us in which court you served, approximately when, the type of cases you heard, whether you were foreperson, and the verdicts.

24. If at the conclusion of the trial you were not to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of not guilty?

25. If at the conclusion of the trial you were to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of guilty?

26. The court will instruct you on the law to be applied in this case. You are required to accept and follow the court's instructions in that regard, even though you may disagree with the law. Is there any one of you who cannot accept this requirement?

27. Do you know of any reason whatever, either suggested by these questions or otherwise, why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

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UNITED STATES OF AMERICA,

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JURY INSTRUCTIONS

07-CR-89-S

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow my instructions on the law, even if you disagree with them. Each of the instructions is important. You must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear or public opinion to influence you. Do not allow any person's race, color, religion, national ancestry or sex to influence you.

Nothing I say now and nothing I said or did during the trial is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

I have taken judicial notice of certain facts that may be regarded as matters of common knowledge. You may accept those facts as proved, but you are not required to do so.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness. In evaluating the testimony of any witness, you may consider among other things: the witness's age; the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things the witness testified about; the witness's memory; any interest, bias, or prejudice the witness may have; the manner of the witness while testifying; and the reasonableness of the witness's testimony in light of all the evidence in the case.

You should judge the defendant's testimony in the same way as you judge the testimony of any other witness.

You should use common sense in weighing the evidence. Consider the evidence in light of your own observations in life. You are allowed to draw reasonable inferences from facts. In other words, you may look at one fact and conclude from it that another fact exists. Any inferences you make must be reasonable and must be based on the evidence in the case.

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts that tend to show whether a defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. You should consider all the evidence in the case, including the circumstantial evidence, in reaching your verdict.

Certain things are not evidence. I will list them for you:

First, testimony and exhibits that I struck from the record or that I told you to disregard are not evidence and must not be considered.



Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and must not influence your verdict.

Third, questions and objections by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your collective memory is what counts.

It is proper for a lawyer to interview any witness in preparation for trial.

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.

You have received evidence of statements said to be made by the defendant to \_\_\_\_\_. You must decide whether the defendant did make the statements. If you find that the defendant did make the statements, then you must decide what weight, if any, you believe the statements deserve. In making this decision, you should consider all matters in evidence having to do with the statements, including those concerning the defendant himself and the circumstances under which the statements were made.

The defendant has an absolute right not to testify. In arriving at your verdict, you must not consider the fact that the defendant did not testify.

You have heard [reputation/opinion] evidence about the character trait of \_\_\_\_\_ for truthfulness [or untruthfulness]. You should consider this evidence in deciding the weight that you will give to \_\_\_\_\_'s testimony.

You have heard [reputation and/or opinion] evidence about the defendant's character trait for [truthfulness, peacefulness, etc]. You should consider character evidence together with all the other evidence in the case and in the same way.

You have heard evidence that the defendant has been convicted of a crime. You may consider this evidence only in deciding whether the defendant's testimony is truthful as a whole, in part, or not at all. You may not consider it for any other purpose.

You have heard evidence of acts of the defendant other than those charged in the indictment. Specifically, \_\_\_\_\_ You may consider this evidence only on the question \_\_\_\_\_. You should consider this evidence only for these limited purposes.

You have heard evidence that \_\_\_\_\_ have been convicted of crimes. You may consider this evidence only in deciding whether the testimony of any of these witnesses is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

You have heard evidence that before the trial, witnesses made statements that may be inconsistent with their testimony here in court. If you find that it is inconsistent, you may consider the earlier statement only in deciding the truthfulness and accuracy of that witness's testimony in this trial. You may not use it as evidence of the truth of the matters contained in that prior statement. If that statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement.

However, a statement made by the defendant before trial that is inconsistent with the defendant's testimony here in court may be used by you as evidence of the truth of the matters contained in it, and also in deciding the truthfulness and accuracy of the defendant's testimony in this trial.

You have heard evidence about a number of the witnesses that may affect your evaluation of their testimony:

The witness \_\_\_\_\_ has admitted lying under oath.

The witnesses \_\_\_\_\_ have received benefits from the government in connection with this case. Specifically, \_\_\_\_\_.

The witnesses \_\_\_\_\_ have received immunity; that is, a promise from the government that any testimony or other information they provided would not be used against them in a criminal case.

The witness \_\_\_\_\_ stated that he/she was involved in the commission of the offense charged against the defendant.

The witness \_\_\_\_\_ has pleaded guilty to an offense arising out of the same occurrence for which the defendant is now on trial.

You may give the testimony of all these witnesses such weight as you believe it deserves, keeping in mind that it must be considered with caution and great care.

You have heard evidence that before the trial, witnesses made statements that may be inconsistent with their testimony here in court. If you find that it is inconsistent, you may consider the earlier statement only in deciding the truthfulness and accuracy of that witness's testimony in this trial. You may not use it as evidence of the truth of the matters contained in that prior statement. If that statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement.

You have heard a witness [witnesses] give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness' qualifications and all of the other evidence in the case.

### THE INDICTMENT

The defendant is charged in the indictment as follows:

#### COUNT 1

On or about January, 2003, to March, 2006, in the Western District of Wisconsin, the defendant, Michael L. Mikulewicz, knowingly and intentionally used and maintained a place, the Jack of Diamonds club, in Trego, Wisconsin, for the purpose of distributing and using mixtures or substances containing methamphetamine, a Schedule II controlled substance.

#### COUNT 2

On or about May 13, 2004, in the Western District of Wisconsin, the defendant, Michael L. Mikulewicz, knowingly and intentionally distributed a mixture or substance containing methamphetamine, a Schedule II controlled substance.

#### COUNT 3

On or about March 10, 2006, in the Western District of Wisconsin, the defendant, Michael L. Mikulewicz, knowingly and intentionally possessed with the intent to distribute a mixture or substance containing methamphetamine, a Schedule II controlled substance.

The defendant has entered a plea of not guilty to these charges against him.

The indictment in this case is the formal method of accusing the defendant of crimes and placing the defendant on trial. It is not evidence against the defendant and does not create any implication of guilt.

The defendant is not on trial for any act or conduct not charged in the indictment.

The defendant is presumed to be innocent of the charges. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome as to the defendant unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged.

The government has the burden of proving the defendant's guilt beyond a reasonable doubt. This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

#### ELEMENTS OF THE OFFENSE: COUNT 1

To sustain the charge against the defendant in Count 1, the government must prove these elements:

- (1) The defendant maintained a place, namely the Jack of Diamonds club;
- (2) The defendant maintained this place for the purpose of distributing and using methamphetamine; and
- (3) The defendant acted knowingly and intentionally.

If you find from your consideration of all of the evidence that each of these elements has been proved beyond a reasonable doubt, then you should find the defendant guilty of Count 1.

If, on the other hand, you find from your consideration of all the evidence that any of these elements has not been proved beyond a reasonable doubt, then you must find the defendant not guilty of Count 1.

In proving Count 1, the government is not required to prove that defendant maintained the named place for the sole purpose of distributing methamphetamine or using methamphetamine. Rather, the government must prove that distributing or using methamphetamine was *a* purpose for the defendant maintaining this place.

In proving Count 1, the government need not prove that defendant actually distributed or used methamphetamine at the premises. What the government must prove is that the defendant had the purpose to do this.

The “purpose” that the government must prove is that of the defendant. It is not enough for the defendant to maintain a place that is used by others for unlawful purposes; the defendant himself must have maintained the place for his own goal of manufacturing methamphetamine. Thus, mere association with persons committing a crime, or knowledge of another person's criminal acts, or both, are not sufficient, without more, to establish the defendant's guilt. Similarly, presence at the scene of a crime by virtue of living at the residence and knowledge that a crime is being committed are not sufficient by themselves to establish the defendant's guilt.

You are instructed that methamphetamine is a schedule II controlled substance.

Distribution is the transfer of possession from one person to another.

#### ELEMENTS OF THE OFFENSE: COUNT AND 2

To sustain the charge in Count 2, the government must prove these elements:

- (1) The defendant distributed methamphetamine as charged in Count 2;
- (2) The defendant did so knowingly or intentionally; and,
- (3) The defendant knew the substance was a controlled substance.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt as to the count that you are considering, then you should find the defendant guilty of Count 2.

On the other hand, if you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt as to the count that you are considering, then you must find the defendant not guilty of Count 2.

### ELEMENTS OF THE OFFENSE: COUNT 3

To sustain the charge in Count 3, the government must prove these elements:

- (1) The defendant knowingly or intentionally possessed methamphetamine as charged in Count 3;
- (2) The defendant possessed this methamphetamine with the intent to deliver it to another person; and,
- (3) The defendant knew that this was a controlled substance.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of Count 3.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you must find the defendant not guilty of Count 3.

Possession of an object is the ability to control it. Possession may exist even when a person is not in physical contact with the object, but knowingly has the power and intention to exercise direction or control over it, either directly or through others.

When the word “knowingly” is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct and did not act through

ignorance, mistake or accident. Knowledge may be proved by the defendant's conduct and by all the facts and circumstances surrounding the case.

Upon retiring to the jury room, select one of your number as your presiding juror. This person will preside over your deliberations and will be your representative here in court. A verdict form has been prepared for you.

*[Court reads verdict form]*

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in, date and sign it.

Each count of the indictment charges the defendant with having committed a separate offense. You must consider each count and the evidence relating to it separate and apart from every other count. You should return a separate verdict as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to any other count.

The verdict must represent the considered judgment of each juror. Whether your verdict is guilty or not guilty, it must be unanimous. You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But do not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement consistent with the individual judgment of each juror. You are impartial judges of the facts. Your only interest is to determine whether the government has proved its case beyond a reasonable doubt.



If it becomes necessary during your deliberations to communicate with the court, you may send a note by a bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the court by any means other than a signed writing, and the court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

Bear in mind also that you are never to reveal to any person –not even to the court– how the jury stands, numerically or otherwise, on the questions before you until after you have reached an unanimous verdict.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

VERDICT

07-CR-89-S

MICHAEL L. MIKULEWICZ,

Defendant.

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COUNT 1

We, the Jury in the above-entitled cause, find the defendant, Michael L. Mikulewicz,

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("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

COUNT 2

We, the Jury in the above-entitled cause, find the defendant, Michael L. Mikulewicz,

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("Guilty" or "Not Guilty")

of the offense charged in Count 2 of the indictment.



COUNT 3

We, the Jury in the above-entitled cause, find the defendant, Michael L. Mikulewicz,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 3 of the indictment.

\_\_\_\_\_  
Presiding Juror

Madison, Wisconsin

Date: \_\_\_\_\_