

## **8.16 CONSPIRACY—ELEMENTS**

The defendants are charged in Counts 1 and 3 of the second superseding indictment with conspiring to possess with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, in violation of Title 21, United States Code, Sections 841(a) and 846. In order for the defendants to be found guilty of those charges, the government must prove each of the following elements beyond a reasonable doubt:

With regard to Count 1:

First, beginning on or about April 1, 2004 and ending on or about March 9, 2005, there was an agreement between two or more persons to commit at least one crime as charged in the second superseding indictment; and

Second, the defendants became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it.

Third, one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you find was committed.

With regard to Count 3:

First, beginning on or about March 12, 2005 and ending on or about April 6, 2005, there was an agreement between two or more persons to commit at least one crime as charged in the second superseding indictment; and

Second, the defendants became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it.

Third, one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you find was committed.

I shall discuss with you briefly the law relating to each of these elements.

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes alleged in the second superseding indictment as an object of the conspiracy with all of you agreeing as to the particular crime which the conspirators agreed to commit.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not

become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

An overt act does not itself have to be unlawful. A lawful act may be an element of a conspiracy if it was done for the purpose of carrying out the conspiracy. The government is not required to prove that the defendants personally did one of the overt acts.

## **8.18 CONSPIRACY – KNOWING OF AND ASSOCIATION WITH OTHER CONSPIRATORS**

A conspiracy may continue for a long period of time and may include the performance of many transactions. It is not necessary that all members of the conspiracy join it at the same time, and one may become a member of a conspiracy without full knowledge of all the details of the unlawful scheme or the names, identities, or locations of all of the other members.

Even though a defendant did not directly conspire with the other defendant or other conspirators in the overall scheme, the defendant has, in effect, agreed to participate in the conspiracy if it is proved beyond a reasonable doubt that:

- (1) each defendant directly conspired with one or more conspirators to carry out at least one of the objects of the conspiracy,
- (2) each defendant knew or had reason to know that other conspirators were involved with those with whom the defendant directly conspired, and
- (3) each defendant had reason to believe that whatever benefits the defendant might get from the conspiracy were probably dependent upon the success of the entire venture.

It is no defense that a person's participation in a conspiracy was minor or for a short period of time.

## **8.20 CONSPIRACY LIABILITY FOR SUBSTANTIVE OFFENSE COMMITTED BY CO-CONSPIRATOR (*PINKERTON* CHARGE)**

Each member of the conspiracy is responsible for the actions of the other conspirators performed during the course and in furtherance of the conspiracy. If one member of a conspiracy commits a crime in furtherance of a conspiracy, the other members have also, under the law, committed that crime.

Therefore, you may find each defendant guilty of distribution of methamphetamine as charged in Count 2 of the Second Superseding Indictment if the government has proved each of the following elements beyond a reasonable doubt:

1. a person, namely Juan Arnulfo Elizarraraz-Rivera, named in Count 2 of the Second Superseding Indictment, committed the crime of distributing or aiding and abetting in the distribution of methamphetamine as alleged in Count 2 of the Second Superseding Indictment;
2. the person was a member of the conspiracy charged in Count 1 of the Second Superseding Indictment;
3. the person committed the crime of distributing or aiding and abetting the distribution of methamphetamine in furtherance of the conspiracy;
4. the defendant was a member of the same conspiracy at the time the offense charged in Count 2 of the Second Superseding Indictment was committed; and
5. the offense fell within the scope of the unlawful agreement and could reasonably have been foreseen to be a necessary or natural consequence of the unlawful agreement.