

11.7 Conspiracy—Sears Charge

Before being convicted of conspiracy, an individual must conspire with at least one co-conspirator. There can be no conspiracy when the only person with whom the defendant allegedly conspired was a government [agent] [informant] who secretly intended to frustrate the conspiracy.

Comment

A defendant who conspires only with a government agent is not guilty of conspiracy;

however, a conspiracy conviction is permitted if at least one co-conspirator is not a government

agent. *United States v. Barragan*, 871 F.3d 689, 710-11 (9th Cir. 2017); *see also Sears v. United States*, 343 F.2d 139, 142 (5th Cir. 1965) (“there can be no indictable conspiracy with a government informer who secretly intends to frustrate the conspiracy”); Instruction 11.7 (Conspiracy—*Sears* Charge).

Revised Apr. 2019