

12.6 Buyer-Seller Relationship

A buyer-seller relationship between a defendant and another person, standing alone, cannot support a conviction for conspiracy. The fact that a defendant may have bought [specify controlled substance] from another person or sold [specify controlled substance] to another person is not sufficient without more to establish that the defendant was a member of the charged conspiracy. Instead, a conviction for conspiracy requires proof of an agreement to commit a crime beyond that of the mere sale.

In considering whether the evidence supports the existence of a conspiracy or the existence of a buyer-seller relationship, you should consider all the evidence, including the following factors:

[(1) whether the sales were made on credit or consignment;]

[(2) the frequency of the sales;]

[(3) the quantity of the sales;]

[(4) the level of trust demonstrated between the buyer and the seller, including the use of codes;]

[(5) the length of time during which the sales were ongoing;]

[(6) whether the transactions were standardized;]

[(7) whether the parties advised each other on the conduct of the other's business;]

[(8) whether the buyer assisted the seller by looking for other customers;]

[(9) whether the parties agreed to warn each other of potential threats from competitors or law enforcement;] and

[(10) whether the buyer was free to shop elsewhere.]

These are merely a list of relevant factors to aid you in analyzing the evidence; the presence or absence of any single factor is not determinative.

Comment

Use this instruction with Instruction 12.5 (Controlled Substance—Conspiracy to Distribute or Manufacture) if applicable.

See United States v. Moe, 781 F.3d 1120, 1128 (9th Cir. 2015) (explaining that no buyer-seller instruction is required when jury instructions as whole accurately inform jury that

conspiracy cannot be found based solely on sale of drugs from one party to another. However, buyer-seller instruction might assist jury in working through fact-intensive determinations and, in certain circumstances, buyer-seller instruction might be required); *see also United States v. Mendoza*, 25 F.4th 730, 742 (9th Cir. 2022) (declining to address whether sua sponte instruction on “buyer-seller rule” was required).

“To show a conspiracy, the government must show not only that [the seller] gave drugs to other people knowing that they would further distribute them, but also that he had an agreement with these individuals to so further distribute the drugs.” *United States v. Lennick*, 18 F.3d 814, 819 (9th Cir. 1994).

“A relationship of mere seller and buyer, with the seller having no stake in what the buyer does with the goods, shows the absence of a conspiracy, because it is missing the element of an agreement for redistribution.” *United States v. Loveland*, 825 F.3d 555, 562 (9th Cir. 2016). Evidence showing that the seller probably knew the buyer was reselling the drugs based on the quantities and repeated sales between the two is insufficient by itself to establish an agreement for redistribution. *See id.*

When the prosecution relies on circumstantial evidence to establish an agreement to distribute drugs, “what we are looking for is evidence of a prolonged and actively pursued course of sales and . . . knowledge of and shared stake in the . . . drug operation.” *Mendoza*, 25 F.4th at 736. “If we instead see only ‘a casual sale [or purchase] of drugs, of a quantity consistent with personal use on the part of the buyer, with no evidence of any subsequent (or planned) redistribution of purchased drugs,’ the evidence is generally insufficient to support a conspiracy conviction.” *Id.* The “entire course of dealing” should be considered. *Id.* at 739. A relatively small number of communications and drug purchases over a course of dealing between buyer and seller does not support a finding of an agreement. *Id.* at 739-740. A “buyer-seller relationship (as opposed to conspiracy) is particularly likely when . . . the downstream buyer called the upstream seller (rather than vice versa) and when the downstream buyer was ‘free to shop elsewhere.’” *Id.* at 739 (quoting *Loveland*, 825 F.3d at 563)). A conspiracy was less likely when the buyer “had to pester” the seller for drugs and “threaten[ed] to purchase drugs from someone else” and “haggled over price and quantity.” *Id.*

The list of factors provided in this instruction is neither necessarily required nor meant to be exhaustive. *See Moe*, 781 F.3d at 1125-26. The list of factors presented to the jury should be tailored to fit the facts of the case.

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