

5.10(A) BUYER/SELLER RELATIONSHIP

A conspiracy requires more than just a buyer-seller relationship between the defendant and another person. In addition, a buyer and seller of [name of drug] do not enter into a conspiracy to [distribute [name of drug]; possess [name of drug] with intent to distribute] simply because the buyer resells the [name of drug] to others, even if the seller knows that the buyer intends to resell the [name of drug].

To establish that a [buyer; seller] knowingly became a member of a conspiracy with a [seller; buyer] to [distribute [name of drug]; possess [name of drug] with intent to distribute], the government must prove that the buyer and seller had the joint criminal objective of distributing [name of drug] to others.

Committee Comment

This instruction should be used only in cases in which a jury reasonably could find that there was only a buyer-seller relationship rather than a conspiracy.

A routine buyer-seller relationship, without more, does not equate to conspiracy. *United States v. Johnson*, 592 F.3d 749 (7th Cir. 2010); *United States v. Colon*, 549 F.3d 565, 567 (7th Cir. 2008). This issue may arise in drug conspiracy cases. In *Colon*, the Seventh Circuit reversed the conspiracy conviction of a purchaser of cocaine because there was no evidence that the buyer and seller had engaged in a joint criminal objective to distribute drugs. *Id.* at 569–70, citing *Direct Sales Co. v. United States*, 319 U.S. 703, 713 (1943) (distinguishing between conspiracy and a mere buyer-seller relationship); see also *United States v. Kincannon*, 593 F.3d 893, 897 (7th Cir. 2009) (regular and repeated purchases of narcotics on standardized terms, even in distribution quantities, does not make a buyer and seller into conspirators); *United States v. Lechuga*, 994 F.2d 346, 47 (7th Cir. 1993) (*en banc*) (drug conspiracy conviction cannot be sustained by evidence of only large quantities of controlled substances being bought or sold).

In *Colon*, the Seventh Circuit was critical of the previously-adopted pattern instruction on this point, which included a list of factors to be considered. The Committee has elected to simplify the instruction so that it provides a definition, leaving to argument of counsel the weight to be given to factors shown or not shown by the evidence.

Some cases have suggested that particular combinations of factors permit an inference of conspiracy. See, e.g., *United States v. Vallar*, 635 F.3d. 271 (7th Cir. 2011) (repeated purchases on credit, combined with standardized way of doing business and evidence that purchaser paid seller only after reselling the drugs); *United States v. Kincannon*, 567 F.3d 893 (7th Cir. 2009). But the cases appear to reflect that particular factors do not always point in the same direc-

tion. See *United States v. Nunez*, 673 F.3d 661, 665 and 666 (7th Cir. 2012) (“Sales on credit and returns for refunds are normal incidents of buyer-seller relationships,” but they can in some situations be “plus’ factors” indicative of conspiracy). The Committee considered and rejected the possibility of drafting an instruction that would zero in on particular factors, out of concern that this would run afoul of *Colon* and due to the risk that the instruction might be viewed by jurors as effectively directing a verdict.