

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

UNITED STATES OF AMERICA	:	
	:	
v.	:	No. 2:05-CR-74-02
	:	
BENOIT VOGHELL,	:	
	:	
Defendant.	:	

JURY CHARGE

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

This case is a criminal prosecution brought by the United States against the Defendant, Benoit Voghell. The grand jury Indictment charges the Defendant in two counts. You will receive a copy of the Indictment to take with you into the jury room.

Count One of the Indictment alleges that:

From in or about 2000 to in or about January 2004, in the District of Vermont, the Defendants, Michel LePage, Benoit Voghell, and J.P. LaTour, along with Ronald Aldrich, Roland Paul Lahue and others known and unknown to the Grand Jury, did knowingly and intentionally conspire to distribute marijuana, a Schedule I controlled substance. The offense involved 1,000 kilograms or more of a mixture or substance containing marijuana.

Count Two alleges that:

From in or about 2000 to in or about January 2004, in the District of Vermont, the Defendants, Michel LePage, Benoit Voghell, and J.P. LaTour, along with Ronald Aldrich, Roland Paul Lahue and others known

and unknown to the Grand Jury, did knowingly and intentionally conspire to import marijuana, a Schedule I controlled substance into the United States from Canada. The offense involved 1,000 kilograms or more of a mixture or substance containing marijuana.

ROLE OF INDICTMENT

At this time, I would like to remind you of the function of a grand jury indictment. An indictment is merely a formal way to accuse the defendant of a crime preliminary to trial. An indictment is not evidence. The Indictment does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the nature of the charges against the defendant.

The defendant has pleaded not guilty to the counts in the Indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact that have been raised by the allegations of the Indictment and the denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice against the defendant or the prosecution.

MULTIPLE COUNTS

A separate crime or offense is charged in each of the two counts of the Indictment. Each charge against the defendant and the evidence pertaining to each charge should be considered separately. You must return separate verdicts on each count in which the defendant is charged. The fact that you may find the

defendant not guilty or guilty as to one of the offenses charged should not control your verdict as to the other offense charged against the defendant.

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE

The government must prove the defendant guilty beyond a reasonable doubt. The question naturally is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not a caprice or whim; it is not a speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy.

In a criminal case, the burden is at all times upon the government to prove guilt beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to the defendant, which means that it is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt. The

law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

If, after fair and impartial consideration of all of the evidence you have a reasonable doubt, it is your duty to find the defendant not guilty. On the other hand, if after fair and impartial consideration of all the evidence you are satisfied of the defendant's guilt beyond a reasonable doubt, you should vote to convict.

The law presumes that the defendant is innocent of the charges against him. The presumption of innocence lasts throughout the trial and ends only if you, the jury, find beyond a reasonable doubt that the defendant is guilty. Should the government fail to prove the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

EVIDENCE

You have seen and heard the evidence produced in this trial and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits that have been received in evidence, and all the facts which may have been admitted or stipulated. I would now like to call to your attention certain guidelines by which you are to evaluate the evidence.

There are two types of evidence which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something she or he knows by virtue of her or his own senses -- something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is its present existence or condition.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You infer on the basis of reason and experience and common sense from one established fact the existence or non-existence of some other fact. Circumstantial evidence is of no less value than direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.

TESTIMONY AND ARGUMENTS EXCLUDED

I caution you that you should entirely disregard any testimony that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. The evidence that you will consider in reaching your verdict consists, as I have said, only of the sworn testimony of witnesses, the stipulations made by the parties, and all the exhibits that have been received

in evidence.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

Anything you have seen or heard outside the courtroom is not evidence, and must be entirely disregarded. You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited merely to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in light of your experiences.

CREDIBILITY OF WITNESSES

You, as jurors, are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness, because you may accept or reject the testimony of any witness, in whole or in part. In weighing the testimony of the witnesses you have heard, you should consider their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if

any; their resentment or anger toward the defendant, if any; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons may well hear or see things differently, or may have a different point of view regarding various occurrences. Innocent misrecollection or failure of recollection is not an uncommon experience. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance, or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony

of any witness as you see fit.

In this case you have heard testimony from a number of witnesses. I am now going to give you some guidelines for your determinations regarding the testimony of the various types of witnesses presented in this case.

CO-CONSPIRATOR AS GOVERNMENT WITNESS

The government has called as witnesses people who were named by the prosecution as co-conspirators but who were not charged as defendants.

For this reason, you should exercise caution in evaluating their testimony and scrutinize it with great care. You should consider whether they have an interest in the case and whether they have a motive to testify falsely. In other words, ask yourselves whether they have a stake in the outcome of this trial. As I have indicated, their testimony may be accepted by you if you believe it to be true and it is up to you, the jury, to decide what weight, if any, to give to the testimony of these unindicted co-conspirators.

LAW ENFORCEMENT WITNESSES

You have heard the testimony of law enforcement officials in this case. The fact that a witness may be employed by the federal, state, or local government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than

that of an ordinary witness.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

EXPERT WITNESSES

You have heard testimony from expert witnesses. An expert is allowed to express an opinion on those matters about which he or she has special knowledge and training. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts. In weighing the expert's testimony, you may consider his or her qualifications, opinions, and reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether to believe a witness's testimony. You may give the expert's testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept the expert's testimony merely because he or she is an expert. Nor should you substitute it for your own reason,

judgment, and common sense. The determination of the facts in this case rests solely with you.

INTEREST IN OUTCOME

As a general matter, in evaluating the credibility of each witness, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

This is not to suggest that every witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

In evaluating the witnesses and evidence in this case, I also caution you that there are certain inferences and factors that you may not consider in reaching your decision.

RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE

You may not consider the race, religion, national origin, sex, or age of the defendant or any of the witnesses in your deliberations over the verdict or in the weight given to any

evidence.

GOVERNMENT AS A PARTY

You are to perform the duty of finding the facts without bias or prejudice toward any party. You are to perform this duty in an attitude of complete fairness and impartiality.

This case is important to the government, for the enforcement of criminal laws is a matter of prime concern to the community. Equally, this case is important to the defendant, who is charged with a serious crime.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a case. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals before the Court.

DEFENDANT NOT TESTIFYING

You may have observed that the defendant did not testify in this case. The defendant has a constitutional right not to do so. He does not have to testify, and the government may not call him as a witness. The defendant's decision not to testify raises no presumption of guilt and does not permit you to draw any unfavorable inference. Therefore, in determining whether or not the government has proved the defendant's guilt beyond a reasonable doubt, you are not to consider, in any manner, the fact that the defendant did not testify. Do not even

discuss it in your deliberations.

IMPERMISSIBLE TO INFER PARTICIPATION FROM ASSOCIATION

You may not infer that the defendant was guilty of participating in criminal conduct merely from the fact that he associated with other people who were guilty of wrongdoing.

IMPERMISSIBLE TO INFER PARTICIPATION FROM MERE PRESENCE

You also may not infer that the defendant is guilty of participating in criminal conduct merely from the fact that he was present at the time the crime was being committed and had knowledge that it was being committed.

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

Having explained the general guidelines by which you will evaluate the evidence in this case, I will now instruct you with regard to the law that is applicable to your determinations in this case.

It is your duty as jurors to follow the law as stated to you in these instructions and to apply the rules of law to the facts that you find from the evidence. You will not be faithful to your oath as jurors if you find a verdict that is contrary to the law that I give to you.

However, it is the sole province of the jury to determine the facts in this case. I do not, by any instructions given to you, intend to persuade you in any way as to any question of fact.

The parties in this case have a right to expect that you will carefully and impartially consider all the evidence in the case, that you will follow the law as I state it to you, and that you will reach a just verdict.

CONSPIRACY

Counts 1 and 2 of the Indictment charge the defendant with conspiring to violate drug laws by distributing a controlled substance and importing a controlled substance, in this case, marijuana.

Under the law, a "conspiracy" is an agreement or combination of two or more persons to join together to accomplish some unlawful purpose. In Count 1, the object of the conspiracy alleged is the distribution of marijuana. In Count 2, the object of the conspiracy alleged is the importation of marijuana into the United States from outside of the United States.

In order to establish a conspiracy offense it is not necessary for the government to prove that the defendant and others were members of the scheme at all times or had entered into any formal type of agreement. It is sufficient to show that the defendant and one or more co-conspirators, at some time during the period alleged in the indictment, came to a mutual understanding to accomplish an unlawful act by means of a joint plan or common design. Also, because the essence of a conspiracy offense is the making of the scheme itself, it is not necessary

for the government to prove that the conspirators actually succeeded in accomplishing their unlawful plan, although in this case there has been evidence introduced from which you may find that actual importation and distribution of marijuana occurred.

What the evidence in the case must show beyond a reasonable doubt is:

(1) that two or more persons came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the indictment; and

(2) that Defendant Benoit Voghell knowingly became a member of such conspiracy.

EXISTENCE OF AGREEMENT

The first element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that two or more person entered the unlawful agreement charged in the indictment. In order for the government to satisfy this element, you need not find that the alleged members of the conspiracy met together and entered into any express or formal agreement.

Similarly, you need not find that the alleged conspirators stated, in words or writing, what the scheme was, its object or purpose, or every precise detail of the scheme or the means by which its object or purpose was to be accomplished. What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people to

cooperate with each other to accomplish an unlawful act.

You may of course, find that the existence of an agreement to disobey or disregard the law has been established by direct proof. However, since conspiracy is, by its very nature, characterized by secrecy, you may also infer its existence from the circumstances of this case and the conduct of the parties involved.

In a very real sense, then, in the context of conspiracy cases, actions often speak louder than words. In this regard, you may, in determining whether an agreement existed here, consider the actions and statements of all of those you find to be participants as proof that a common design existed on the part of the persons charged to act together to accomplish an unlawful purpose.

MEMBERSHIP IN THE CONSPIRACY

The second element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy under both Counts 1 and 2, is that Benoit Voghell knowingly became a member of the conspiracy.

If you are satisfied that the conspiracy charged in the indictment existed, you must next ask yourselves who the members of that conspiracy were. In deciding whether the defendant was, in fact, a member of the conspiracy, you should consider whether the defendant knowingly joined the conspiracy. Did he

participate in it with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective as an associate or worker?

In that regard, it has been said that in order for a defendant to be deemed a participant in a conspiracy, he must have had a stake in the venture or its outcome. You are instructed that, while proof of a financial or other interest in the outcome of a scheme is not essential, if you find that the defendant had such an interest, that is a factor which you may properly consider in determining whether or not the defendant was a member of the conspiracy charged in the indictment.

As I mentioned, before the defendant can be found to have been a conspirator, you must first find that he knowingly joined in the unlawful agreement or plan. The key question, therefore, is whether the defendant joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement.

The defendant's knowledge is a matter of inference from the facts proved. In that connection, I instruct you that to become a member of the conspiracy, the defendant need not have known the identities of each and every other member, nor need he have been aware of all of their activities. Moreover, the defendant need not have been fully informed as to all of the details or scope of the conspiracy in order to justify an inference of knowledge on

his part. Furthermore, the defendant need not have joined in all of the conspiracy's unlawful acts or objectives or participated in it for the full time period alleged in the indictment.

The extent of a defendant's participation has no bearing on the issue of a defendant's guilt. A conspirator's liability is not measured by the extent or duration of his participation. Indeed each member may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw a defendant within the ambit of the conspiracy.

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.

I want to caution you, however, that the defendant's mere presence at the scene of the alleged crime does not, by itself, make him a member of the conspiracy. Similarly, mere association with one or more members of the conspiracy does not automatically make the defendant a member. A person may know, or be friendly with, a criminal, without being a criminal himself. Mere

similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy.

I also want to caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. Moreover, the fact that the acts of a defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make the defendant a member. More is required under the law. What is necessary is that the defendant must have participated with knowledge of at least some of the purposes or objectives of the conspiracy and with the intent of aiding in the accomplishment of those unlawful ends.

In sum, the defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged, advised or assisted in it for the purpose of furthering the illegal undertaking.

**ELEMENTS OF THE OFFENSE - COUNT I: UNLAWFUL CONSPIRACY TO
DISTRIBUTE A CONTROLLED SUBSTANCE (21 U.S.C. §§ 841(a)(1),
841(b)(1)(A), 846)**

As I said, Count 1 alleges a conspiracy to distribute a controlled substance. The offense of distribution involves two elements:

(1) that the Defendant or a co-conspirator intentionally distributed a controlled substance; and

(2) that the Defendant knew that the substance to be distributed is a controlled substance.

To distribute means to deliver a controlled substance. Deliver is defined as the actual, constructive or attempted transfer of a controlled substance. Distribution does not require a sale.

In other words, the government must prove beyond a reasonable doubt for Count 1 that a conspiracy existed that contemplated that a controlled substance would be distributed.

I instruct you that marijuana is a controlled substance under federal law.

ELEMENTS OF THE OFFENSE - COUNT II: UNLAWFUL CONSPIRACY TO IMPORT A CONTROLLED SUBSTANCE (21 U.S.C. §§ 952, 960(a)(1); 960(b)(1)(G), 963)

As I said, Count 2 alleges a conspiracy to import a controlled substance into the United States. The offense of importation involves two elements:

(1) that the Defendant or a co-conspirator intentionally brought a controlled substance into the United States from some place outside the United States; and

(2) that the Defendant knew that the substance to be imported is a controlled substance.

In other words, the government must prove beyond a reasonable doubt for Count 2 that a conspiracy existed that contemplated that a controlled substance was brought into the

United States from someplace outside the United States.

Although the government must prove that the defendant knew that the conspiracy involved importing a controlled substance, the government does not have to prove that the defendant knew the exact nature of the drugs involved. It is enough that the government proves that the defendant knew that it was some kind of controlled substance.

AMOUNT OF DRUGS

If you find that the government has proved beyond a reasonable doubt the elements of conspiracy to distribute and conspiracy to import a controlled substance, then there is one more issue that you must decide with respect to each conspiracy count. I have provided you with a special verdict form asking you a question with regard to the amount of marijuana that each conspiracy involved. The burden is on the government to establish the amount of marijuana beyond a reasonable doubt. Remember, you should address this issue and complete the form only if you find the two elements of conspiracy have been established.

The special verdict form first lists a finding that the government proved beyond a reasonable doubt that the conspiracy involved 1,000 kilograms or more of marijuana. If you find that the government has proved that fact beyond a reasonable doubt, you should check that finding and stop. The defendant, however,

can be found guilty of a conspiracy offense even if you do not find that the conspiracy involved 1,000 kilograms or more of marijuana. The special verdict form also allows you to make findings that the government has proven that the conspiracy involved between 100 kilograms but less than 1,000 kilograms of marijuana.

In deciding whether the government has proven that the conspiracy involved a particular quantity of marijuana, you may consider quantities the defendant was personally involved in and quantities he knew or reasonably should have known other members of the conspiracy were involved in or would be involved in at the time the defendant was a member of the conspiracy.

CONCLUSION

I caution you, members of the jury, that you are here to determine whether the government has proven the defendants guilty beyond a reasonable doubt. I remind you that the mere fact that this defendant has been indicted is not evidence against him. Also, the defendant is not on trial for any act or conduct or offense not alleged in the Indictment. Nor are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

You should know that the punishment provided by law for the offenses charged in the Indictment is a matter exclusively within the province of the judge, and should never be considered by the

jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

It is your duty as jurors to consult with one another and to deliberate. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your other jurors. Do not hesitate to re-examine your own views and change your opinion if you think that you were wrong. Do not, however, surrender your honest convictions about the case solely because of the opinion of your other jurors, or for the mere purpose of returning a verdict.

To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous.

At this time, I would like to offer my sincere thanks to the alternate.

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience. After you have reached agreement as to the counts contained in the Indictment, you will have your foreperson record a verdict of guilty or not guilty as to each count. Your foreperson will then sign and date the verdict form and you will then return to the courtroom.

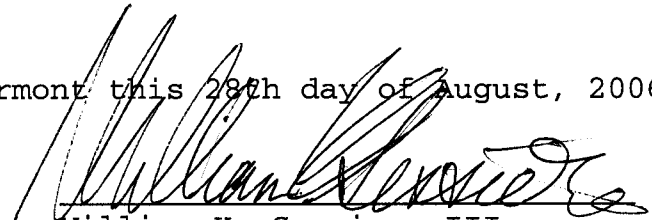
If, during your deliberations you should desire to communicate with the Court, please put your message or question

in writing signed by the foreperson, and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can speak with you. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

Also, a copy this charge will go with you into the jury room for your use.

I appoint _____ as your foreperson.

Dated at Burlington, Vermont this 28th day of August, 2006.



William K. Sessions III
Chief Judge, U.S. District Court