UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
v.	:	File No. 1:09-CR-43
EDWARD CAMPBELL,	:	
Defendant.	:	

CHARGE TO THE JURY

Members of the Jury:

This is a criminal prosecution brought by the United States against defendant EDWARD CAMPBELL. I remind you of the function of a grand jury indictment. An indictment is merely a formal way to accuse a defendant of a crime preliminary to trial.

The indictment is not evidence. It 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 charges in the Indictment. You have been chosen and sworn as jurors in this case to determine the facts that have been raised by the allegations of the indictment and the denial of the defendant when he pleaded not guilty.

Reasonable Doubt

The law presumes a defendant to be innocent of a crime. Therefore, although accused, a defendant begins the trial with a "clean slate," that is, with no evidence against him. Furthermore, the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against a defendant. So the presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of a defendant's guilt after careful and impartial consideration of the evidence in the case.

The government is not required to prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must 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.

You must remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for 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.

So if, after careful and impartial consideration of all the evidence in this case, you have a reasonable doubt that the defendant is guilty of an offense charged in the Indictment, then you must acquit him of that offense. Unless the government proves, beyond a reasonable doubt, that the defendant has committed each and every element of an offense charged in the Indictment, you must find him not guilty of that offense.

As I have instructed you, the law presumes a 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 acquit him.

Government as a Party

You are to perform the duty of finding the facts without bias or prejudice as to any party and with complete fairness and impartiality.

The case is important to the government, for the enforcement of criminal laws is one of the government's duties. Equally, this case is important to the defendant, who is charged with serious crimes.

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

Evidence

You have seen and heard the evidence presented in this trial, and it is the sole province of you the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits that have been admitted, and any 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. You may consider two types of evidence: direct and circumstantial. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts or circumstances pointing to the existence or non-existence of certain facts.

The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of 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.

Evidence: Testimony and Arguments Excluded

I caution that you should entirely disregard any testimony which has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence.

Anything you have seen or heard outside the courtroom is not evidence -- you are to consider only the evidence in this case. But in your consideration of the evidence, you are not limited merely to the 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 proven facts, reasonable inferences you believe are justified in light of your experiences.

Evidence: Defendant's Right Not to Testify

The defendant did not testify in this case. Under our constitution, he has no obligation to testify or to present any other evidence because it is the prosecution's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the prosecution throughout the entire trial and never shifts to the defendant. The defendant is never required to prove he is innocent.

You may not attach any significance to the fact that the defendant did not testify. No adverse inference against him may be drawn by you because he did not take the witness stand. You may not consider this as evidence against the defendant in any way in your deliberations in the jury room.

Evidence: Recordings and Transcripts

The Government has offered some evidence at this trial in the form of audio recordings. These recordings were made with knowledge of one or more of the parties to the conversations, and with the consent and agreement of one or more parties to the conversations. The use of this procedure to gather evidence is perfectly lawful, and the Government was entitled to do so.

Transcripts of some of the recorded conversations were displayed during the trial. However, the evidence of the conversation is the recording itself. If you heard words other than or in addition to the words contained in the transcript, you are free to disregard the transcript. In other words, the transcript was provided to you solely for the purpose of assisting you in evaluating the recorded evidence. Once again, you, the jury, are the sole judges of the facts.

Inferences: 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.

Inferences: Evidence of Failure to Appear

You have heard evidence that the defendant failed to appear for a Vermont state court hearing following his arrest and that he was later delivered from outside Vermont to Federal Marshalls. If proved, the flight of a defendant after he knows he is to be accused of a crime may tend to prove that the defendant believed he was guilty. It may be weighed by you in this connection, together with all the other evidence.

However, flight may not always reflect feelings of guilt. Moreover, feelings of guilt, which are present in many innocent people, do not necessarily reflect actual guilt.

Whether or not evidence of flight does show that the defendant believed that he was guilty, and the significance, if any, to be given to the defendant's feelings on this matter are for you to determine.

Inferences: Influencing Witnesses

You have heard testimony that the defendant attempted to influence witnesses whom he believed would be called to testify against him at trial. The defendant is not on trial for attempting to influence witnesses and you may not consider that evidence as a substitute for proof of guilt in this case.

However, if you find the defendant did attempt to influence witnesses, you may, but are not required to, infer that the defendant believed he was guilty of the offense for which he is charged.

Whether or not evidence of the defendant's attempts to influence witnesses shows he believed he was guilty of the crime for which he is charged and the significance, if any, to be given to such evidence, is for you, the jury, to decide.

Inferences: Evidence of Crack Cocaine

You have heard evidence that a small amount of crack cocaine was found at the defendant's apartment. The defendant is not on trial for possession of cocaine and you may not consider the evidence as a substitute for proof of guilt of the offenses charged in this case. Nor may you consider this evidence as proof of his character.

However, if you find that defendant knew about the presence of cocaine in the apartment and falsely denied to the police that any drugs were in the apartment, then you may, but are not required to, infer that the defendant made a false exculpatory statement.

Inferences: False Exculpatory Statements

You may consider statements a defendant knowingly and voluntarily made when he was informed that a crime had been committed or when he was accused of a crime.

When a defendant voluntarily offers an explanation or makes some statement tending to show his innocence and it is shown that he knew the statement or explanation was false, you may consider this as showing a consciousness of guilt by the defendant since it is reasonable to infer that an innocent person does not invent or fabricate an explanation or statement tending to establish his innocence.

On the other hand, if you find that a defendant made a false exculpatory statement, there may be innocent reasons a person might make a false statement about their innocence. Fear of law enforcement, reluctance to become involved, and simple mistake may cause a person who has committed no crime to give such a statement or explanation.

Whether or not evidence of a defendant's explanation or statement indicates a consciousness of guilt and the significance, if any, to be attached to that evidence, are for you to decide.

Credibility of Witnesses

You, as jurors, are the sole judges of the credibility of 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, since you may accept or reject the testimony of any witness, in whole or in part. In weighing the testimony of the witnesses, 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.

The weight of the evidence is not determined by the number of witnesses testifying. 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 this testimony. Two or more persons may hear or see things differently, or may have a

different point of view regarding various occurrences. 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 may find that a witness has made statements outside of this trial that are inconsistent with the statements made during the trial. You may find that a prior inconsistent statement, or a change in a witness's testimony, detracts from the credibility of the testimony the witness has provided in court. You may consider out-of-court statements not made under oath only to determine whether a witness's testimony has been truthful, but not as evidence of any facts contained in the statements. As to out-of-court statements that were made under oath, such as statements made in prior testimony, you may consider them for all purposes, including for the truth of the facts contained in the statements.

Law Enforcement Witness

You have heard the testimony of several law enforcement officials. 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 appropriate.

Credibility of Witnesses: Accomplice Called by the Government

You have heard a witness testify that he was an accomplice, that is, he said he participated with the defendant in the commission of one of the charged offenses. Whether to believe such a witness, or so-called accomplice, is for you to decide.

The government legitimately argues it must present the witnesses as it finds them, and that only people who take part in criminal activity have knowledge about criminal behavior by others.

For those reasons, accomplice testimony is allowed. Indeed, it is the law in federal courts that the testimony of accomplices may be enough in itself for conviction, if the jury finds that the testimony establishes guilt beyond a reasonable doubt.

It is also the case, however, that accomplice testimony must be scrutinized with great care and viewed with particular caution in deciding how much of that testimony to believe.

You should ask yourselves whether these so-called accomplices would benefit more by lying, or by telling the truth. Was their testimony made up in any way because they believed or hoped they would somehow receive favorable treatment from the government by testifying falsely? Or did they believe their interests would be best served by testifying truthfully? If you believe the witness

was motivated by hopes of personal gain, was the motivation one which would cause him to lie, or was it one which would cause him to tell the truth? Did this motivation color his testimony?

In sum, you should look at all of the evidence in deciding what credence and what weight, if any, you will give to testimony from an accomplice.

Credibility of Witnesses: Witness Using or Addicted to Drugs

One or both sides have called witnesses who were using or were addicted to drugs when the events he or she observed took place. I instruct you there is nothing improper about calling such a witness to testify about events within his or her personal knowledge.

On the other hand, testimony from such a witness must be examined with greater scrutiny than the testimony of any other witness. The testimony of a witness who was using drugs at the time of the events he or she is testifying about, or during the testimony at trial, may be less believable because of the effect the drugs may have on his or her ability to perceive or relate to the events in question.

If you decide to accept this testimony, after considering it in light of all the evidence, you may give it whatever weight, if any, it deserves.

Credibility of Witnesses: Government Informers

There has been evidence introduced at trial that the government used an informer in this case. I instruct you there is nothing improper in the government's use of informers and, indeed, certain criminal conduct never would be detected without the use of informers. You, therefore, should not concern yourselves with how you personally feel about the use of informers. Your concern is to decide whether the government has proved the guilt of the defendant beyond a reasonable doubt, regardless of whether evidence was obtained by the use of an informer.

On the other hand, when an informer testifies, as occurred here, that testimony must be examined with greater scrutiny than the testimony of an ordinary witness. You should consider whether the informant received any benefits or promises from the government which would motivate her to testify falsely against the defendant. For example, the informant may believe that she will only continue to receive these benefits if she produces evidence of criminal conduct.

If you decide to accept the informer's testimony, after considering it in the light of all the evidence in this case, then you may give it whatever weight, if any, you find it deserves.

Consider Each Count Separately

A separate crime or offense is charged in each count of the Indictment. Each charge against the defendant, and any evidence pertaining to it, should be considered separately. The fact that you find may the defendant guilty or not guilty of one of the offenses charged should not control or influence your verdict as to any other charged offense against the defendant. Nor should you make any inference or judgment based on the fact that the defendant is charged with more than one offense.

Punishment

The punishment provided by law for the offenses charged in the Indictment is a matter exclusively for the Judge, and should never be considered by you in any way, in arriving at an impartial verdict as to the guilt or innocence of the accused.

Instructions of Law

Having told you the general guidelines by which you will consider the evidence, I will now instruct you on the law that is applicable to your determinations in this case. It is your duty as jurors to follow the law as stated in these instructions and to apply the rules of law to the facts you find from the evidence.

You will not be faithful to your oath as jurors if you return a verdict that is contrary to the law stated in these instructions. It is the sole province of you, the jury, however, to determine the facts in this case. Through these instructions I do not intend to persuade you in any way in your role of determining the facts.

The parties in this case have a right to expect you will carefully and impartially consider all the evidence in the case, follow the law in these instructions and reach a just verdict.

Counts 1-3 of The Indictment

In Counts 1 through 3 of the Indictment, the defendant, Edward Campbell, is charged with knowingly and intentionally distributing Oxycontin on or about certain dates.

The Counts read as follows:

"On or About" Explained

The Indictment charges that the offenses were committed "on or about" certain dates.

Although it is necessary for the government to prove beyond a reasonable doubt the offenses were committed on dates reasonably near the dates alleged in the Indictment, it is not necessary for the government to prove the offenses were committed precisely on the dates charged.

The Statute Defining the Offense Charged

As I just told you, Counts 1 through 3 of the Indictment charge the defendant, Edward Campbell, with distributing Oxycontin in violation of 21 U.S.C. § 841(a)(1).

Section 841(a)(1) of Title 21 of the United States Code provides, in relevant part, that: "(a) . . . it shall be unlawful for any person knowingly or intentionally – (1) to . . . distribute . . . a controlled substance; . . . ."

Elements of the Offense of Distribution of a Controlled Substance

In order to sustain its burden of proof for the crime of distribution of a controlled substance, the government must prove the following two elements beyond a reasonable doubt:

One: The defendant knowingly and intentionally distributed a controlled substance, as charged in the Indictment; and

Two: At the time of the distribution, the defendant knew that the substance distributed was a controlled substance, in this case, Oxycontin.

I instruct you that Oxycontin is a Schedule II controlled substance.

"Knowingly" Defined

You have been instructed that in order to sustain its burden of proof, the government must prove that the defendant acted knowingly. A person acts knowingly if he acts intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness. You may consider evidence of the defendant's words, acts, or omissions, along with all other evidence, in deciding whether the defendant acted knowingly.

First Element - Distribution Defined

The first element the government must prove beyond a reasonable doubt is distribution. The term "to . . . distribute," as used in these instructions, means to deliver a controlled substance, in this case, Oxycontin. "Deliver" means the actual, constructive, or attempted transfer of Oxycontin. Simply stated, the words distribute and deliver mean to pass on, or to hand over to another, or to cause to be passed on or handed over to another, or to try to pass on or hand over to another, Oxycontin. For example, if A tells or orders B to hand over the drugs to C, then A has caused the drugs to be handed over, and therefore has distributed them. Distribution does not require a sale. Activities in furtherance of the ultimate sale, such as vouching for the quality of drugs, negotiating for or receiving the price, and supplying or delivering the drugs may constitute distribution. In short, distribution requires a concrete involvement in the transfer of the drugs.

Second Element - Knowledge that the Drugs Were Controlled Substances

The second element the government must prove beyond a reasonable doubt is that the defendant knew that the substance being distributed was a controlled substance. In this regard, 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.

Conclusion

I caution you, members of the jury, that you are here to determine the guilt or innocence of the defendant solely from the evidence presented in court. Again, merely because the 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.

In the event the defendant is found guilty, his sentence is the responsibility of the judge and should never be considered by you in any way in arriving at an impartial verdict as to his guilt or innocence.

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

To return a verdict, it is necessary that every juror agree to the verdict -- it must be unanimous on every element of the charges.

Regarding the Use of Electronic Technology to Research or Communicate about a Case

During deliberations, you must communicate about the case only with one another and only when all the jurors are present in the jury room. You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blog, Twitter, e-mail, text message, or any other means. Do not contact anyone to assist you during deliberations. These communication rules apply until I discharge you at the end of the case. If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the bailiff.

In reaching your decision, do not do any research on your own or as a group. Do not use dictionaries, the Internet, or any other reference materials.

I appoint _____ as your foreperson.

Upon retiring to the jury room, your foreperson will preside over your deliberations and be your spokesperson in court. When you have reached a verdict, the foreperson will record the verdict, sign and date the verdict form, and bring it to the courtroom where it will be read.

If during your deliberations you wish to communicate with me, the foreperson should do so in writing, place it in an envelope and give it to the court security officer who will bring it to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I may speak with you. I caution you, however, with regard to any message or question you might send, that you should never reveal your numerical division, if any.

Copies of this charge will go with you into the jury room for your use.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
	:	
v.	:	File No. 1:09-CR-43
	:	
EDWARD CAMPBELL,	:	
	:	
Defendant.	:	

VERDICT FORM

1. As to the offense of distribution of Oxycontin on January 29, 2009 (Count 1 of the Indictment), we find the defendant:

Not Guilty _____ Guilty _____

2. As to the offense of distribution of Oxycontin on March 19, 2009 (Count 2 of the Indictment), we find the defendant:

Not Guilty _____ Guilty _____

3. As to the offense of distribution of Oxycontin on March 27, 2009 (Count 3 of the Indictment), we find the defendant:

Not Guilty _____ Guilty _____

_____

Foreperson

_____

Date

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
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EDWARD CAMPBELL,	:	
Defendant.	:	

Your honor, we have reached a verdict.

_____

Foreperson

_____

Date