FINAL

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Case No. 5:22-cr-29
	)	
MELVIN HILL,	)	
	)	
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.

I will start by reading the charge or, as it also is called, the indictment to you. Before I do so, I would like to remind you of the function of an indictment. An indictment is a formal way to accuse a defendant of a crime prior to trial. In this case, the superseding indictment describes the five charges against Mr. Hill. Mr. Hill is not on trial for any act or any conduct not specifically charged in the superseding indictment.

An indictment is not evidence. An 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 charges against the defendant. The defendant has pleaded not guilty to 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.

By reading the indictment I do not mean to convey any view or opinion about whether the charge it contains has been proved to be true.

I will now instruct you concerning issues of law which apply generally to the trial of this case.

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE

The law presumes that the defendant, Melvin Hill, is innocent of the charges against him. The presumption of innocence lasts throughout the trial and during your deliberations. The presumption of innocence 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.

The government must prove the defendant guilty beyond a reasonable doubt. The question is: what is a reasonable doubt? It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has in his or her mind 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 making an important decision in his or her own affairs. A reasonable doubt is not a whim, speculation, or suspicion. A reasonable doubt may arise from a lack of evidence. 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 the government to prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to a 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 a fair and impartial consideration of all the evidence against the defendant, you have a reasonable doubt, it is your duty to find that 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.

JURORS' EXPERIENCE/SPECIALIZED KNOWLEDGE

Anything you have seen or heard outside the courtroom is not evidence and must be disregarded entirely. It would be a violation of your oath as jurors to consider anything outside the courtroom in your deliberations. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. 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 the evidence. However, if any juror has specialized knowledge, expertise, or information with regard to the facts and

circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

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 admitted into evidence, and all the facts that have been admitted by stipulation of the parties. I would now like to call your attention to certain guidelines by which you are to evaluate the evidence.

There are two types of evidence that 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 such as a document or photograph.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You may infer on the basis of reason, experience, and common sense from one established fact, the existence or non-existence of some other fact. For example, if you heard the sound of snowplows in the night, you might infer that it had started to snow. There could be another explanation, of course, but snow fall would be a reasonable inference.

Circumstantial evidence is of no less value than direct evidence. Circumstantial evidence alone may be sufficient evidence of guilt.

You should weigh all the evidence in the case. Your verdict must be based solely on the evidence introduced at trial, or the lack thereof. Remember that there are five separate charges or counts in this case. After weighing all the evidence relevant to a particular charge, if you are not convinced of the defendant's guilt beyond a reasonable doubt on that charge, you must find him not guilty of that offense. You must consider each charge separately. I will supply with you with a verdict form listing each charge and providing a space for your verdict on each charge.

STRICKEN TESTIMONY/PARTIES' STATEMENTS/COURT'S RULINGS

I caution you that you should not consider or base your decision upon any testimony or exhibit that has been excluded or stricken from the record. Likewise, the arguments of the parties and the questions they asked are not evidence in the case. By the rulings the court made in the course of the trial, I did not intend to indicate to you any of my own preferences, or to influence you in any manner regarding how you should decide the case. The parties have a duty to object to evidence they believe is not admissible. You must not hold it against either side if one side made an objection.

ARGUMENTS OF THE PARTIES

In addition to objections in the course of the trial, the parties have also provided you with opening statements and closing arguments. These statements are very important because they represent the effort of both sides to organize and describe the evidence for you and to advocate for their respective positions. I ask that you consider their statements and arguments carefully. But these statements and arguments are not

evidence in the case. The evidence is limited to testimony from witnesses, exhibits which the judge has admitted into evidence, and the stipulations of the parties.

CREDIBILITY OF WITNESSES

As jurors, you 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, if any, toward the defendant; 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. You may accept all of it, some of it, or reject it altogether.

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 or the most evidence. 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 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 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.

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 may create 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 has 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 any 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.

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 deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is proper for the defense 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 a law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

USE OF INFORMANTS

You have heard testimony from a paid informant who was employed by the government to investigate the defendant.

Sometimes the government uses informants who may conceal their true identities in order to investigate suspected violations of the law. There is nothing improper or illegal with the government using these techniques. Indeed, certain types of evidence would be extremely difficult to detect without the use of informants.

Whether or not you approve of the use of an informant to detect unlawful activities is not to enter into your deliberations in any way.

CONSENSUAL RECORDINGS

The government has offered evidence in the form of informant recordings of conversations with the defendant. These recordings were made without the knowledge of the defendant, but with the consent and agreement of Lacey Partlow.

The use of this procedure to gather evidence is lawful, and the government is entitled to use the recordings in this case.

RECORDINGS AND TRANSCRIPTS

The government has been permitted to display a transcript that it prepared containing the government's interpretation of what appears on the recording of Mr. Hill's statement. This was given to you as an aid or guide to assist you in listening to the recording. However, it is not in and of itself evidence. Therefore, when the recording was played, I advised you to listen very carefully to it. You alone should make your own interpretation of what appears on the recording based on what you heard. If you think you heard something differently than appeared on the transcript, then what you heard is controlling.

SEARCH WARRANTS

You have heard testimony in this case regarding evidence seized by the government during the execution of search warrants. It is the responsibility of the court to determine the validity and legality of those search warrants and other searches. These are not issues for your consideration. It is up to you to decide what significance, if any, the evidence seized may have in this case.

EXPERT WITNESSES

I have permitted certain witnesses to express their professional opinions about matters that are in issue. A witness may be permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience and training. Such testimony is presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing this opinion testimony, you may consider the witness' qualifications, his or her opinions, the reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness' testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of the evidence in this case. You should not, however, accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. 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.

ADMISSIONS BY DEFENDANT

There has been evidence that defendant made a statement to law enforcement after his arrest which the prosecution claims includes admissions of facts relevant to some elements of the charges in this case. In deciding what weight to give the defendant's statement, you should examine with great care whether the statement was made and whether the defendant made it voluntarily and with understanding of its meaning.

DEFENDANT NOT TESTIFYING

You may have observed that the defendant did not testify in this case. A 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. A defendant's decision not to testify raises no presumption of guilt and does not permit you to draw any unfavorable inference.

Similarly, the law never imposes upon a defendant the burden or duty of calling any witnesses, producing any evidence, or cross-examining the witnesses for the government. The burden is at all times upon the government to prove guilt beyond a

reasonable doubt, and this burden never shifts to a defendant. The defendant is never required to prove that he is not guilty.

Therefore, in determining whether the defendant is guilty or not guilty of the crimes charged, you are not to consider, in any manner, the fact that the defendant did not testify. Do not even discuss it in your deliberations.

BIAS, PREJUDICE, AND EQUALITY BEFORE THE COURT

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. You must not allow any of your personal feelings about the nature of the crimes charged to interfere with your deliberations, or influence the weight given to any of the evidence.

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 to be given to any evidence.

This case is important to the parties and the court. You must give it the fair and serious consideration which it deserves.

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.

The question of possible punishment of the defendant in the event of a conviction is not the jury's concern and should not influence your deliberations. Your function is to

weigh the evidence in the case and to determine whether the defendant is guilty beyond a reasonable doubt, solely upon the basis of such evidence. If the defendant is convicted, the court will consider the issue of punishment in a separate phase of the case.

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.

THE ESSENTIAL ELEMENTS OF THE FIVE CHARGES

The defendant Melvin Hill is charged with five counts of violation of federal law. You have already heard me read the charges aloud. Count One and Count Two charge Mr. Hill with distribution of a controlled substance, specifically fentanyl. Count Three charges him with possession with intent to distribute the following controlled substances:

fentanyl; cocaine base; cocaine; 50 grams or more of methamphetamine and 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine. Count Four and Count Five charge him with possession of a firearm following conviction of an offense punishable by a term of imprisonment exceeding one year.

THE ESSENTIAL ELEMENTS OF THE CHARGE: COUNTS 1 and 2

Counts 1 and 2 of the Superseding Indictment charge the defendant with knowingly and intentionally distributing controlled substances. Count 1 reads as follows:

> *On or about February 10, 2022, in the District of Vermont, the defendant MELVIN HILL, knowingly and intentionally distributed fentanyl, a Schedule II controlled substance.*

Count 2 reads as follows:

> *On or about March 8, 2022, in the District of Vermont, the defendant MELVIN HILL, knowingly and intentionally distributed fentanyl, a Schedule II controlled substance.*

To sustain its burden of proof for the crime of distribution of controlled substances, the government must prove the following two elements beyond a reasonable doubt:

> One: that the defendant distributed controlled substances as charged in the Indictment;
>
> Two: that the defendant distributed the controlled substances knowingly and intentionally.

I instruct you that fentanyl is a Schedule II controlled substance under federal law.

"DISTRIBUTION" DEFINED

Counts 1 and 2 accuse the defendant of knowingly and willfully distributing fentanyl on two separate dates. The term "distribute," in this context, and as used in these instructions, means

to deliver a controlled substance, in this case, fentanyl. "Deliver" means the actual, constructive, or attempted transfer of a controlled substance. 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, a controlled substance. 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.

KNOWLEDGE THAT THE DRUGS WERE CONTROLLED SUBSTANCES

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

Your decision whether the defendant knew the materials he distributed were controlled substances involves a decision about the defendant's state of mind. It is obviously impossible to prove directly the operation of the defendant's mind. But a wise and intelligent consideration of all the facts and circumstances shown by the evidence and the exhibits in this case may enable you to infer what the defendant's state of mind was. In our everyday affairs, we are continuously called upon to decide from the actions of others what their state of mind is. Experience has taught us that, frequently, actions speak louder and more clearly than spoken or written words. Therefore, you may rely on circumstantial evidence in determining the defendant's state of mind.

For example, if the defendant was the sole occupant of a residence or a vehicle, it is reasonable to conclude that the defendant knew about items in the residence or vehicle. The defendant's behavior may also indicate knowledge. Nervousness in the presence of the drugs or

flight from the site at which authorities have identified drugs may indicate that the defendant knew that the materials in question were controlled substances. Also, the possession of a large quantity of drugs may indicate that the defendant knew what he had in his possession. These examples are neither exhaustive nor conclusive. It is up to you, based on all the evidence, to determine whether the defendant knew that he possessed controlled substances.

"KNOWINGLY" AND "INTENTIONALLY" EXPLAINED

You have been instructed that in order to sustain its burden of proof, the government must prove that the defendant acted knowingly and intentionally. A person acts knowingly and intentionally if he acts voluntarily, and not because of ignorance, mistake, accident, or carelessness. Whether the defendant acted knowingly and intentionally may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case.

THE ESSENTIAL ELEMENTS OF THE CHARGE: COUNT 3

Count 3 of the Superseding Indictment charges the defendant with knowingly and intentionally possessing with intent to distribute several controlled substances. Count 3 reads as follows:

> *On or about and between March 10-11, 2022, in the District of Vermont, the defendant MELVIN HILL knowingly and intentionally possessed, with the intent to distribute, fentanyl, cocaine base, cocaine, 50 grams or more of methamphetamine and 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine.*

To sustain its burden of proof for the crime of possession with intent to distribute controlled substances, the government must prove the following three elements beyond a reasonable doubt:

> One: that the defendant possessed the controlled substances as charged in the Superseding Indictment;

Two: that the defendant knew that he possessed the controlled substances; and

Three: that the defendant possessed the controlled substances with the intent to distribute them.

In addition, as I will explain later in this charge, with respect to methamphetamine the Superseding Indictment further alleges that the offense involved 50 grams or more of methamphetamine and 500 grams or more of a mixture or substance containing methamphetamine.

I instruct you that methamphetamine, fentanyl, cocaine base and cocaine are Schedule II controlled substances.

THE FIRST ELEMENT: POSSESSION OF CONTROLLED SUBSTANCES

As I have instructed you, the government must prove beyond a reasonable doubt that the defendant "possessed" the controlled substances alleged in Count 3. The legal concept of possession may differ from the everyday usage of the term, so I will explain it in some detail.

Actual possession is what most of us think of as possession; that is having physical custody or control of an object. For example, if you find that the defendant had the drugs on his person, you may find that he had possession of the drugs. If an individual has the ability and intent to exercise substantial control over an object that he does not have in his physical custody, then he is also in possession of that item. An example of this from everyday experience would be a person's possession of items he keeps in the safe deposit box of his bank. Although the person does not have physical custody of those items, he exercises substantial control over them and so has constructive possession of them.

The law recognizes also that "possession" may be sole or joint. If one person alone possesses something, that is sole possession. However, it is possible that more than one person may have the power and intention to exercise control over drugs. This is called joint possession.

If you find that the defendant had such power and intention, then he possessed the drugs under this element even if he possessed the drugs jointly with another.

Possession of drugs cannot be found solely on the ground that the defendant was near or close to the drugs. Nor can it be found simply because the defendant was present at a scene where drugs were involved, or solely because the defendant associated with a person who did control the drugs or the property where they were found. However, these factors may be considered by you, in connection with all other evidence, in making your decision about whether the defendant possessed the drugs.

INFERENCE FROM CONTROL OVER PLACE WHERE FOUND OR LOCATED

A defendant may own or have control over the place where the controlled substances are found or located, such as an apartment. When the defendant is the sole person having such ownership or control, this control is significant evidence of the defendant's control over the drugs themselves, and thus of his possession of the drugs. You should note, however, that the defendant's sole ownership or control of a residence does not necessarily mean that the defendant had control and possession of the drugs found or located in it.

A defendant may also share ownership or control of the place where the drugs are found or located. In this event, the drugs may be possessed by only one person, or by some of the people who control the place, or by all of them. However, standing alone, the fact that a particular defendant had joint ownership or control over the place where the drugs were found or located is not sufficient evidence to find that the defendant possessed the drugs found there. In order to find that a particular defendant possessed drugs because of his joint ownership or control over the place

where they were found or located, you must find beyond a reasonable doubt that the defendant knew about the presence of the drugs and intended to exercise control over them.

THE SECOND ELEMENT: KNOWLEDGE THAT THE DRUGS WERE CONTROLLED SUBSTANCES

As with the distribution charges in Counts 1 and 2, the government must prove that the defendant knew that he possessed controlled substances. Again, however, the government does not have to prove the defendant knew the exact nature of the drugs he possessed. It is enough that the government proves that the defendant knew that he possessed some kind of controlled substance.

THE THIRD ELEMENT: INTENT TO DISTRIBUTE CONTROLLED SUBSTANCES

To prove the third element of Count 3, the government must demonstrate beyond a reasonable doubt that the defendant had control over the controlled substances with the state of mind or purpose to transfer them to another person. In this case, the controlled substances are fentanyl, cocaine base, cocaine and methamphetamine.

Since you cannot read the defendant's mind, you must make inferences from his behavior. However, you may not convict the defendant unless these inferences convince you beyond a reasonable doubt that the defendant intended to distribute the controlled substances.

When I say that you must find that the defendant intended to distribute the controlled substances, this does not mean that you must find that the defendant intended personally to distribute or deliver the drugs. It is sufficient if you find that the defendant intended to cause or assist the distribution of the narcotics.

Basically, what you are determining is whether the drugs in the defendant's possession were for his personal use or for the purpose of distribution. Often it is possible to make this determination from the quantity of drugs found in the defendant's possession.

The possession of a large quantity of narcotics does not necessarily mean that the defendant intended to distribute them. On the other hand, a defendant may have intended to distribute narcotics even if he did not possess large amounts of them. Other physical evidence, such as paraphernalia for the packaging or processing of drugs, can show you intent. There might also be evidence of a plan to distribute. You should make your decision about whether the defendant intended to distribute the narcotics in his possession from all the evidence presented.

"KNOWINGLY" AND "INTENTIONALLY" EXPLAINED

You have been instructed that in order to sustain its burden of proof on Count 3, the government must prove that the defendant acted knowingly and intentionally. As I explained in connection with Counts 1 and 2, a person acts knowingly and intentionally if he acts voluntarily, and not because of ignorance, mistake, accident, or carelessness. This knowledge element may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case.

TYPE AND AMOUNT OF DRUGS

The Superseding Indictment alleges that the offense charged in Count 3 - possession with intent to distribute controlled substances – involved fentanyl, cocaine base, cocaine, 50 grams or more of methamphetamine and 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine. In order to find the defendant guilty on Count 3, you do not have to find that the defendant possessed all kinds of the controlled substances alleged. It is sufficient that you, the jury, unanimously agree that the defendant possessed, with intent to distribute, at least one of the four types of drugs alleged in the Superseding Indictment. If you find

the defendant "Not Guilty" on Count 3, there is no reason to consider the issues of drug type and drug quantity that I shall now discuss with you.

If, however, you find the defendant "Guilty" on Count 3, you should then consider which of the alleged drug types – fentanyl, cocaine base, cocaine and methamphetamine – the government has proven beyond reasonable doubt and you should reflect that unanimous finding by checking the appropriate lines on the special verdict form.

If you decide that the government has proven beyond a reasonable doubt that the defendant possessed methamphetamine with intent to distribute, you should then consider whether the government has proven, beyond reasonable doubt, that that offense involved 50 grams or more of pure methamphetamine and also whether it involved 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine. You should report your findings on those issues by checking the appropriate line or lines on the special verdict form.

COUNTS FOUR AND FIVE: THE SUPERSEDING INDICTMENT AND THE STATUTE

Counts Four and Five of the Superseding Indictment charge the defendant with being a person convicted of a crime who possessed a firearm shipped in interstate commerce. Counts Four and Five read as follows:

> *On or about the dates listed below, in the District of Vermont, MELVIN HILL, the defendant, knowing that he had been convicted of crimes punishable by imprisonment for a term exceeding one year, knowingly possessed in and affecting commerce, the following firearms:*
>
> | | | |
> |---|---|---|
> | ***Count 4*** | *March 10, 2022,* | *Taurus pistol, serial number #SMB43170;* |
> | ***Count 5*** | *March 11, 2022,* | *Glock pistol, serial number #BKTH178.* |

The relevant statute on this subject is Title 18, United States Code, Section 922(g)(1), which provides:

> It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year ... to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

ELEMENTS OF THE OFFENSE

The government must prove each of the following elements beyond a reasonable doubt in order to sustain its burden of proving the defendant guilty:

First, that the defendant was convicted, in any court, of a crime punishable by imprisonment for a term exceeding one year, as charged;

Second, that at the time the defendant allegedly possessed each firearm, he knew of the previous conviction and knew that it was a crime punishable by imprisonment for a term exceeding one year;

Third, after this conviction, the defendant knowingly possessed the firearm, as charged; and

Fourth, that the possession charged was in or affecting interstate or foreign commerce.

FIRST ELEMENT – DEFENDANT'S PRIOR CONVICTION

The first element the government must prove beyond a reasonable doubt is that before the date the defendant is charged with possessing the firearm, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year. The parties have stipulated to this element.

I instruct you, in this connection, that the prior conviction that is an element of the charge here is only to be considered by you for the fact that it exists, and for nothing else. You are not to consider it for any other purpose. You may not consider the prior conviction in deciding whether it is more likely than not that the defendant was in knowing possession of the gun that is charged, which is a disputed element of the offense.

DEFENDANT'S KNOWLEDGE OF PRIOR CONVICTION

The government must also prove beyond a reasonable doubt that, at the time the defendant possessed the firearm, he knew that he had been convicted of a crime punishable by imprisonment for more than one year. The parties have stipulated to this element.

THIRD ELEMENT - POSSESSION OF FIREARM

The third element that the government must prove beyond a reasonable doubt is that on or about the dates set forth in the Superseding Indictment the defendant knowingly possessed a firearm.

A "firearm" is any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

To "possess" means to have something within a person's control. This does not necessarily mean that the defendant must hold it physically, that is, have actual possession of it. As long as the firearm is within the defendant's control, he possesses it. If you find that the defendant either had actual possession of the firearm, or that he had the power and intention to exercise control over it, even though it was not in his physical possession, you may find that the government has proven possession.

The law also recognizes that possession may be sole or joint. If one person alone possesses it, that is sole possession. However, it is possible that more than one person may have

the power and intention to exercise control over the firearm. This is called joint possession. If you find that the defendant had such power and intention, then he possessed the firearm under this element even if he possessed it jointly with another. Proof of ownership of the firearm is not required.

To satisfy this element, you must also find that the defendant knowingly possessed the firearm. This means that he possessed the firearm purposely and voluntarily, and not by accident or mistake. It also means that he knew that the weapon was a firearm, as we commonly use the word. However, the government is not required to prove that the defendant knew that he was prohibited from possessing a firearm, knew that he was breaking the law, or intended to use the firearm to cause harm.

FOURTH ELEMENT – FIREARM IN OR AFFECTING COMMERCE

The fourth element that the government must prove beyond a reasonable doubt is that the firearm the defendant is charged with possessing was in or affecting interstate commerce.

This means that the government must prove that, at some time prior to the defendant's possession, the firearm had traveled in interstate commerce. It is sufficient for the government to satisfy this element by proving that, at any time prior to the date charged in the superseding indictment, the firearm crossed a state line. It is not necessary that the government prove that the defendant himself carried it across a state line, nor must the government prove who carried it across or how it was transported. It is also not necessary for the government to prove that the defendant knew that the firearm had previously traveled in interstate commerce.

VARIANCE: DATES

The Superseding Indictment charges that the offense occurred "on or about" a certain date. It does not matter if the Superseding Indictment charges that a specific act

occurred "on or about" a certain date, and the evidence indicates that, in fact, it was on another date. The law only requires a substantial similarity between the date alleged in the Indictment and the date established by testimony or exhibits.

UNANIMOUS VERDICT REQUIRED

To return a verdict, it is necessary that every juror agree to the verdict. In order to find the defendant guilty or not guilty, your verdict must be unanimous regarding each essential element of the count under consideration. This requirement of unanimity also applies to your decision concerning the quantity of methamphetamine and methamphetamine mixture alleged in Count Three.

JUROR NOTE TAKING

During this trial, you have been provided with pencil and paper, and some of you have taken notes. As I explained at the beginning of the trial, all jurors should be given equal attention during the deliberations regardless of whether or not they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. In your deliberations you must rely upon your collective memory of the evidence in deciding the facts of the case. If there is any difference between your memory of the evidence and your notes, you may ask that the record of the proceedings be read back. If a difference still exists, the record must prevail over your notes.

CONCLUSION

I caution you, members of the jury, that you are here to determine whether the defendant before you today is not guilty or guilty solely from the evidence in this case. I remind you that the mere fact that a defendant has been indicted is not evidence against

him. Also, a 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 not consider the consequences of a guilty or not guilty determination. The punishment provided by law for the offenses charged in the superseding indictment is a matter exclusively within the responsibility of the judge and should never be considered by the jury in any way in arriving at an impartial verdict.

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 fellow 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 fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. If a vote is to be taken, your foreperson will ensure that it is done. A verdict form has been prepared for your conclusions. If the verdict form varies in any way from the instructions provided within this jury charge, I instruct you that you are to follow the instructions provided within this jury charge.

After you have reached an agreement, the foreperson will record a verdict of guilty or not guilty as to the defendant on each count. Your foreperson will then sign and date the verdict form and you will return to the courtroom. In all other respects, a foreperson

is the same as any other juror. His or her vote does not count more than any other member of the jury.

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 Court Officer who will bring it to my attention. I will then confer with the attorneys and I will respond as promptly as possible, either in writing or by having you return 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. You should also never communicate the subject matter of your note or your deliberations to any member of the court's staff.

I appoint [redacted] as your foreperson.

Dated at Rutland, in the District of Vermont, this 21st day of August, 2023.

Geoffrey W. Crawford, Chief Judge
United States District Court