

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
v.	:	No. 2:02-CR-69-01
	:	
ROBERT SAVOY,	:	
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, Robert Savoy. 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:

On or about April 30, 2002, in the District of Vermont, ROBERT SAVOY, the defendant, did knowingly and intentionally import into the United States from Canada a quantity of marijuana, a Schedule I controlled substance.

Count Two alleges that:

On or about April 30, 2002, in the District of Vermont, ROBERT SAVOY, the defendant, did knowingly and intentionally possess with intent to distribute a quantity of marijuana, a Schedule I controlled substance.

### 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

I have said that 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 manner 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. Under your oath as jurors you are not to be swayed by sympathy; you are to be guided solely by the evidence in this case.

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.

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.

As I have instructed you, 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. It is a general rule that the law makes no distinction between direct evidence and circumstantial evidence, but requires that your verdict must be based on all the evidence presented. You may convict a defendant on the basis of circumstantial evidence alone, but only if that evidence convinces you of the guilt of that defendant beyond a reasonable doubt.

#### 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. The parties in this case have stipulated to the fact that the material at issue is indeed marijuana, which is a controlled substance.

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.

#### **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.

#### 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.

**CONSCIOUSNESS OF GUILT FROM FALSE EXCULPATORY STATEMENT**

You have heard testimony that the defendant made certain statements outside the courtroom to law enforcement authorities in which the defendant claimed that his conduct was consistent with innocence and not with guilt. The government claims that these statements in which he exonerated or exculpated himself are false.

If you find that the defendant gave a false statement in order to divert suspicion from himself, you may, but are not required to, infer that the defendant believed that he was

guilty. You may not, however, infer on the basis of this alone that the defendant is, in fact, guilty of the crime for which he is charged.

Whether or not the evidence as to the defendant's statements shows that the defendant believed he was guilty, and the significance, if any, to be attached to any such evidence, are matters for you, the jury, to decide.

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.

**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.

**ELEMENTS OF THE OFFENSE - COUNT I: UNLAWFUL IMPORTATION OF  
A CONTROLLED SUBSTANCE (21 U.S.C. § 952(a))**

In order to prove this charge against the defendant, the government must establish beyond a reasonable doubt each of the following elements of the offense:

- (1) that the defendant intentionally brought (or played a part in bringing) a controlled substance into the United States from someplace outside of the United States, as charged in the Indictment;
- (2) that the defendant knew that the substance being imported was a controlled substance;

(3) that the defendant knew he was importing a controlled substance into the United States.

**IMPORTATION OF A CONTROLLED SUBSTANCE**

**INTO THE UNITED STATES**

The first element the government must prove beyond a reasonable doubt is that the defendant intentionally brought (or played a part in bringing) a controlled substance, in this case marijuana, into the United States from someplace outside of the United States, as charged in the Indictment.

To establish this element, the government must prove two things. First, the government must prove beyond a reasonable doubt that the marijuana was brought into the United States from someplace outside of the United States.

Second, the government must prove beyond a reasonable doubt that the substance that the defendant is charged with bringing into the United States is, in fact, marijuana. The parties in this case have stipulated to the fact that the substance at issue is indeed marijuana. I also instruct you that marijuana is a Schedule I controlled substance.

**KNOWLEDGE THAT THE SUBSTANCE BEING IMPORTED WAS**

**A CONTROLLED SUBSTANCE**

The second element that the government must prove beyond a reasonable doubt is that the defendant knew that the substance

being imported was a controlled substance.

To establish this element, the government must prove that the defendant knew that he was bringing a controlled substance into the United States, and that he did not bring it in due to carelessness, negligence, or mistake. If you find that the defendant did not know that he had the marijuana in his possession, or that he did not know that what he possessed was, in fact, a controlled substance, then you must find the defendant not guilty.

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

#### CONSCIOUS AVOIDANCE OF KNOWLEDGE

As I have just instructed you, the government must prove, beyond a reasonable doubt, that the defendant knew that the substance he was importing was a controlled substance. If the defendant lacked this knowledge you must find him not guilty, even if the government proves that the only reason the defendant lacked such knowledge was because he was careless, negligent, or even foolish for failing to obtain it.

In determining whether the defendant acted knowingly, you

may consider whether the defendant deliberately closed his eyes to what would otherwise have been obvious to him. If you find beyond a reasonable doubt that the defendant acted with a conscious purpose to avoid learning the truth that the substance he was importing was a controlled substance, then this element may be satisfied. However, guilty knowledge may not be established by demonstrating that the defendant was merely negligent, foolish, or mistaken.

**KNOWLEDGE THAT A CONTROLLED SUBSTANCE WAS ENTERING**  
**THE UNITED STATES**

The third element the government must prove beyond a reasonable doubt is that the defendant knew he was importing a controlled substance into the United States.

To establish this element the government must prove that the defendant knew that the controlled substance would enter the United States from outside the United States and that this did not occur by accident or mistake.

**ELEMENTS OF THE OFFENSE - COUNT II: POSSESSION WITH INTENT TO**  
**DISTRIBUTE A CONTROLLED SUBSTANCE (21 U.S.C. § 841(a)(1))**

The defendant is charged with possession of, with intent to distribute, a quantity of marijuana. In order to prove this charge against the defendant, the government must establish beyond a reasonable doubt that he knowingly and intentionally



possessed, with the intent to distribute, marijuana. To do so the government must prove the following three elements beyond a reasonable doubt:

- (1) that the defendant possessed marijuana;
- (2) that he knew that he possessed a controlled substance;  
and
- (3) that he possessed it with the intent to distribute it.

To find the defendant guilty of this count, you must find that the government has proven all three of these elements.

#### **POSSESSION OF A CONTROLLED SUBSTANCE**

The first element the government must prove beyond a reasonable doubt is that the defendant possessed a controlled substance, in this case marijuana.

To establish this element, the government must prove that the substance that the defendant is charged with possessing is, in fact, marijuana. The parties in this case have stipulated to the fact that the material at issue is indeed marijuana.

#### **DEFINITION OF POSSESSION**

As I have instructed you, the government must prove beyond reasonable doubt that the defendant "possessed" the marijuana. 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 an individual has drugs on his or her person, he or she may be found to have had possession of the drugs. However, a person need not have actual physical custody of an object in order to be in legal possession of it. If a person has the ability and intent to exercise substantial control over an object that he or she does not have in his or her physical custody, then you may find that person in possession of that item. An example of this from everyday experience would be a person's possession of items he or she keeps in the safe deposit box of his or her bank. Although the person does not have physical custody of those items, he or she exercises substantial control over them and so has legal possession of them.

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

### KNOWLEDGE THAT THE SUBSTANCE WAS A CONTROLLED SUBSTANCE

The second element the government must prove beyond a reasonable doubt is that the defendant knew that he possessed a controlled substance.

To establish this element, the government must prove that the defendant knew that he possessed a controlled substance, and that his possession was not due to carelessness, negligence, or mistake. If you find that he did not know that he had the marijuana in his possession, or that he did not know that what he possessed was, in fact, a controlled substance, then you must find the defendant not guilty.

Although the government must prove that the defendant knew that he possessed a controlled substance, the government does not have to prove that he knew the exact nature of the substance in his possession. It is enough that the government proves that he knew that he possessed some kind of controlled substance.

### METHOD OF PROVING KNOWLEDGE

Your decision as to whether the defendant knew the material he possessed was a controlled substance involves a decision about his state of mind. It is obviously impossible to prove directly the operation of someone's mind. But a wise and intelligent consideration of all the facts and circumstances shown by the evidence and the exhibits in the 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 well rely in part on circumstantial evidence in determining the defendant's state of mind.

A person's behavior may indicate knowledge. Nervousness in the presence of the drugs or flight from the site at which authorities have identified drugs may indicate that a person knew what he or she had in his or her 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 a controlled substance.

#### INTENT TO DISTRIBUTE

The third element that the government must prove is that the defendant intended to distribute a controlled substance. In order to prove the defendant guilty, the government must prove this circumstance beyond a reasonable doubt.

To satisfy this element, the government must prove beyond a reasonable doubt that the defendant had control over the marijuana with the state of mind or purpose to transfer it to another person.

The same considerations that apply to your determination of whether the defendant knew he possessed a controlled substance apply to your decision concerning his intention to distribute it. Since you cannot read his mind, you must make inferences from his testimony or behavior. However, you may not convict the defendant unless these inferences convince you beyond a reasonable doubt that he intended to distribute the marijuana.

When I say that you must find that the defendant intended to distribute the marijuana, this does not mean that you must find that he intended *personally* to distribute or deliver it. It is sufficient if you find that he intended to cause or assist the distribution of the marijuana.

Basically, what you are determining is whether the marijuana in the defendant's possession was 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 a person's possession. (For example, it would be highly unlikely that a person with 50,000 doses of amphetamine possessed them all for consumption).

The possession of a large quantity of drugs does not necessarily mean that a person intended to distribute them. On the other hand, a person may have intended to distribute the drugs even if he or she did not possess large amounts of them.

Other physical evidence, such as paraphernalia for the packaging or processing of drugs, can show an intent. There might also be evidence of a plan to distribute. You should make your decision as to whether the defendant intended to distribute the marijuana in his possession from all of the evidence presented.

#### "ON OR ABOUT" EXPLAINED

Finally, the Indictment in this case charges that a particular offense was committed "on or about" a certain date. It is not necessary for the government to prove that the offense was committed precisely on the date charged; however, it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in the Indictment. For instance, if the indictment charges that a specific crime occurred on March 5, 1992 and you find beyond a reasonable doubt from the evidence that the alleged crime occurred on March 4, 1992, a date reasonably near March 5, 1992, you should return a verdict of guilty on that charge.

#### CONCLUSION

I caution you, members of the jury, that you are here to determine the guilt or innocence of the defendant before you today solely from the evidence in this case. 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

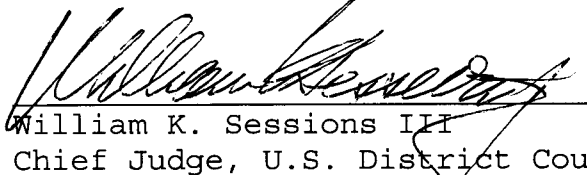
court. A verdict form has been prepared for your convenience. After you have reached agreement as to the counts contained in the Indictment, you will have your foreperson record a verdict of guilty or not guilty as to each count. Your foreperson will then sign and date the verdict form and you will then 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 20 day of March, 2003.

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