

Accomplices

You have also heard witnesses who testified they were accomplices, that is, they said they participated with the defendant in the commission of a crime. The testimony of accomplices must be examined and weighed with greater care than the testimony of a witness who did not claim to have participated in the commission of a crime.

Therefore, you must examine their testimony with caution and weigh it with great care. You must determine whether the testimony of the accomplices has been affected by self-interest, or by their own interest in the outcome of this case, or by any prejudice they may have against the defendant.

Testimony of Drug Users

There has been evidence introduced at trial that the government called as witnesses persons who were using drugs when the events they observed took place. I instruct you that there is nothing improper about calling such witnesses to testify about events within their personal knowledge. Testimony from such witnesses, however, must be examined with greater scrutiny than the testimony of other witnesses. Testimony of witnesses who were using drugs at the time of the events they are testifying about may be less believable because of the effect the drugs may have on the witness's ability to perceive or relate to the events in question. If you decide to accept the testimony of such witnesses, after considering it in light of all the evidence in this case, then you may give it whatever weight, if any, you find it deserves.

INSTRUCTIONS OF LAW

Having told you the general guidelines by which you will consider the evidence in this case, 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 to you 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 find a verdict that is contrary to the law I give to you. However, it is the sole province of you 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 you will carefully and impartially consider all the evidence in the case, you will follow the law as I state it to you, and you will reach a just verdict.

Count 1

In Count 1, defendant Real Gagnon is charged with possession with the intent to distribute marijuana, a controlled substance.

Title 21 of the United States Code, Section 841(a)(1) makes it a crime for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.

To prove this charge against the defendant, the government must establish beyond a reasonable doubt each of the following three elements of the crime:

First, that the defendant possessed narcotic drugs;

Second, that the defendant knew he possessed narcotic drugs;

and

Third, that the defendant possessed the narcotic drugs with the intent to distribute them.

The first element the government must prove beyond a reasonable doubt is that the defendant possessed marijuana. Actual possession is what most of us think of as "possession"; that is, having physical custody or control of an object.

However, a person need not have actual, physical custody of an object to be in legal possession of it. 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 in "possession" of that item.

The law also recognizes 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 the 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 the scene where the 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 whether the defendant "possessed" the drugs.

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

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

Although the government must prove the defendant knew that he possessed narcotics, the government does not have to prove that the defendant knew the exact nature of the drugs in his possession. It is enough that the defendant knew that he possessed some kind of narcotic.

Your decision whether the defendant knew the materials he possessed were narcotics 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 exhibits in the case may enable you to infer what the defendant's state of mind was.

The third element the government must prove beyond a reasonable doubt is that the defendant either distributed the narcotics, or intended to distribute them. The government, need not prove both.

To "distribute" means to deliver a narcotic. Distribution does not require a sale. Activities in furtherance of the ultimate sale, such as vouching for the quality of the 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.

As an alternative to proving that the defendant actually distributed the drugs, to satisfy the third element the government may prove the defendant possessed narcotics with the intent to distribute them. To prove this third element in this way, the government must prove beyond a reasonable doubt that the defendant had control over the drugs with the state of mind or purpose to transfer them to another person.

Again, since you cannot read the defendant's mind, you must make inferences from his behavior. 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.

Count 2

In Count 2, defendant Real Gagnon is charged with the unlawful importation of a controlled substance into the United States from a place outside the United States. Title 21 U.S.C. § 952 provides that "[i]t shall be unlawful . . . to import into the United States from any place outside thereof any [narcotics] except [those] imported under such regulations as the Attorney General shall prescribe."

To prove this charge, the government must establish beyond a reasonable doubt each of the following elements of the crime:

First, that the defendant intentionally brought narcotic drugs into the United States from some place outside the United States, as charged in the indictment;

Second, that the defendant knew that the substance being imported was a narcotic drug, and

Third, that the defendant knew he was importing the narcotic drugs into the United States.

The first element the government must prove beyond a reasonable doubt is that the defendant intentionally brought narcotic drugs into the United States from some place outside the United States as charged in the indictment.

To establish this element, the government must prove two things: (1) that the narcotics were brought into the United States from some place outside the United States and (2) that the

material the defendant is charged with bringing into the United States is, in fact, a narcotic drug.

The second element the government must prove beyond a reasonable doubt is that the defendant knew that the substance being imported was a narcotic drug.

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

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

The third element the government must prove beyond a reasonable doubt is that the defendant knew he was importing the narcotic into the United States. To establish this element, the government must prove the defendant knew that the drugs would enter the United States from outside the United States and that this did not occur by accident or mistake.

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 a 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. Neither 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 fellow jurors. Do not hesitate to re-examine your own views and change your opinion if you think that you were wrong. But also do not 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.

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

I appoint \_\_\_\_\_ as your foreperson.

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

If during your deliberations you wish 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 then bring it to my attention. I will then 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.

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