U.S. DISTRICT COURT
DISTRICT OF VERMONT
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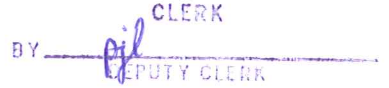


UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 5:12-cr-105
	)	
FRANK CARABALLO	)	

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 Frank Caraballo. The indictment charges FRANK CARABALLO in three counts.

COUNT ONE

From in or about March 2011 to in or about July 2011, in the District of Vermont, defendant FRANK CARABALLO, along with others known and unknown to the Grand Jury, knowingly and willfully conspired to distribute a quantity of a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, and quantities of a mixture or substance containing detectable amounts of cocaine and cocaine base, Schedule II controlled substances. This offense involved 280 grams or more of a mixture or substance containing a detectable amount of cocaine base.

COUNT TWO

In or about July 2011, in the District of Vermont, defendant FRANK CARABALLO, knowingly possessed a firearm in furtherance of a drug trafficking crime for which he may be prosecuted in a Court of the United States, that is,

conspiracy to distribute controlled substances as charged in Count One, and knowingly used and carried such firearm during and in relation to such crime. During this offense FRANK CARABALLO discharged the firearm and caused the death of Melissa Barratt by murder, as defined in 18 U.S.C. § 1111.

COUNT THREE

In or about July 2011, in the District of Vermont, defendant FRANK CARABALLO, knowingly possessed a firearm, that is, a Desert Eagle, .357 caliber pistol, Magnum Research Inc., (serial #7834), in furtherance of a drug trafficking crime for which he may be prosecuted in a Court of the United States, that is, the distribution of a controlled substance in violation of 21 U.S.C. § 841(a).

ROLE OF INDICTMENT

At this time, I would like to remind you of the function of an indictment. An indictment is merely a formal way to accuse a defendant of a crime preliminary to trial. 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 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.

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE

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

However, 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.

The law presumes that the defendant 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 that defendant not guilty.

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 or stipulated. I would now like to call to 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.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You 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 were to see cow tracks in a pasture, that would be circumstantial evidence that there are or were cows in the pasture.

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. After weighing all the evidence, if you are not convinced of the defendant's guilt beyond a reasonable doubt, you must find him not guilty. Your verdict must be based solely on the evidence introduced at trial, or the lack thereof.

STRICKEN TESTIMONY/ATTORNEYS' STATEMENTS/COURT'S RULINGS

I caution you that you should entirely disregard any testimony or exhibit 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. 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 attorneys have a duty to object to evidence they believe is not admissible. You must not hold it against either side if an attorney made an objection.

USE OF RECORDINGS AND TRANSCRIPTS

Some of the evidence in this case includes audio and video recordings. Along with these recordings, the parties were permitted to display a transcript containing the parties' interpretation of what can be heard on the recordings. The transcripts were provided as an aid or guide to assist you, the jury, in listening to and watching the recordings; however, the transcripts themselves are not evidence. The recordings are evidence, and, as such, you must rely on your own interpretation of what you heard on the recordings. If you think you heard something different than what was represented on the transcript, then what you heard on the recording must control.

USE OF CERTAIN RECORDED PHONE CALLS

During this trial, you have heard recordings of calls made by various individuals while those individuals were incarcerated. You may not consider the fact that these calls were placed while a person was incarcerated for any other purpose. Specifically, you may not consider this as evidence that the defendant is of bad character or has a propensity to commit crime. The only crimes for which the defendant is on trial are the crimes which are alleged in the indictment.

PRIOR INCONSISTENT STATEMENTS OF A NON-PARTY WITNESS

You may find that a witness has made statements outside of this trial that are inconsistent with the statements that the witness gave here. You may consider an out-of-court statement that was not made under oath only to determine the credibility of the witness, and you may not consider it as evidence of any facts contained in the statements. However, if an out-of-court statement was made under oath, such as a statement made in prior testimony, then you may consider the statement for all purposes, including for the truth of the facts contained therein.

It is up to you, the jury, after considering all the evidence of this case, to determine whether a prior statement was inconsistent, and if so what weight, if any, to give to the inconsistent statement.

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, 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. Remember, a defendant in a criminal prosecution has no obligation to present any evidence or call any 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 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.

EXPERT WITNESSES

You have heard evidence from witnesses who are known as expert witnesses. An expert witness is a person who has special knowledge, experience, training, or education in his or her profession or area of study. Because of this expertise, an expert witness may offer an opinion about one or more of the issues in the case. In evaluating their testimony, you should evaluate their credibility and statements just as you would with any other witness. You should also evaluate whether the expert witness's opinion is supported by the facts that have been proved, and whether the opinion is supported by the witness's knowledge, experience, training, or education. You are not required to give the testimony of an expert witness any greater weight than you believe it deserves just because the witness has been referred to as an expert.

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 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 a law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

CONFIDENTIAL INFORMANTS

There has been evidence that the government used confidential informants in this case, and you have heard the testimony of some of these confidential informants. There is nothing improper in the government's use of confidential informants and, indeed, certain criminal conduct would never be detected without the use of confidential informants. You, therefore, should not concern yourselves with how you personally feel about the use of confidential informants, because that is really beside the point. Put another way, 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 confidential informants.

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

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

ACCOMPLICES

You have heard the testimony of individuals who testified that 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 by the jury with greater care than the testimony of a witness who did not claim to have participated in the commission of that crime.

This is also true of accomplices or other witnesses who have received immunity. A witness receives immunity from the government when that witness is told his or her crimes will go unpunished in exchange for testimony, or that his or her testimony will not be used against him or her. A witness who has entered into such an agreement has an interest in this case different from any ordinary witness. A witness who realizes that he or she may be able to obtain his or her own freedom or receive a lighter sentence by giving testimony favorable to the government may have a motive to testify falsely. Therefore, you must examine his or her testimony with caution and weigh it with great care. You must determine whether the testimony of the accomplice has been affected by self-interest, or by an agreement he or she may have with the government, or by his or her own interest in the outcome of this case, or by any prejudice he or she may have against the defendant.

As I have indicated, it is up to you, the jury, to decide what weight, if any, to give to the testimony of these witnesses.

WITNESSES' PLEA AGREEMENTS

There has been evidence that some of the government's witnesses pled guilty after entering into agreements with the government to testify. There is also evidence that the government agreed to dismiss some of the charges against some of these witnesses, or agreed not to prosecute them on other charges in exchange for an agreement to plead guilty and testify at trial. The government also promised to bring the witnesses' cooperation to the attention of the sentencing court.

The government is permitted to enter this kind of plea agreement. You, in turn, may accept the testimony of such a witness or witnesses and convict the defendant on the basis of this testimony alone, if the testimony convinces you, the jury, of the defendant's guilt for the crimes charged beyond a reasonable doubt.

You should bear in mind that a witness who has entered into such an agreement has an interest in this case different from an ordinary witness. A witness who realizes that he or she may be able to obtain his or her own freedom, or receive a lighter sentence by giving testimony favorable to the government, may have a motive to testify falsely. Conversely, a witness who realizes that he or she may benefit by providing truthful testimony may have a motive to be honest. Therefore, you must examine his or her testimony with caution and weigh it with great care. After scrutinizing his or her testimony, you may decide to accept it, reject it, accept it in part, or reject it in part, and you may give it whatever weight, if any, you find it deserves.

WITNESSES' GUILTY PLEAS

You have heard the testimony of government witnesses who pled guilty to charges arising out of the same facts as this case. You are not to draw any conclusions or inferences of any kind about the guilt of the defendant from the fact that a prosecution witness pled guilty to similar charges. A witness's decision to plead guilty is a personal decision about his or her own guilt. It may not be used by you in any way as evidence against the defendant here.

USE OF DRUGS BY CERTAIN WITNESSES

There has been evidence introduced at the trial that some of the individuals that the government called as witnesses were using drugs when the events they observed or participated in took place. There is nothing improper about calling such witnesses to testify about events within their personal knowledge. However, testimony from such witnesses must be examined with greater scrutiny than the testimony of other witnesses. You must consider the effect, if any, the drugs may have on the witness's ability to perceive and recall 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.

ADMISSIONS BY THE DEFENDANT

There has been evidence that the defendant made certain statements in which the government claims he admitted certain facts.

In deciding what weight to give the defendant's statements, you should first examine with great care whether each statement was made and whether, in fact, it was voluntarily and understandingly made. I instruct you that you are to give the statements such weight as you feel they deserve in light of all the evidence.

THE DEFENDANT'S EXCULPATORY STATEMENTS

You have heard evidence that the defendant made certain statements outside the courtroom 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 intentionally 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 this basis alone that the defendant is, in fact, guilty of the crimes for which he is charged.

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

THE DEFENDANT'S ALIBI STATEMENTS

You have heard evidence that the defendant made certain statements outside the courtroom in which the defendant claimed that he was not present at the scene of the crime when it was committed. The government claims that the defendant's alibi statements were false.

If you find that the defendant intentionally gave a false statement in order to mislead investigating authorities that he was not present at the scene of the crime, you may, but are not required to, infer that the defendant believed that he was guilty. You may not, however, infer on this basis alone that the defendant is, in fact, guilty of the crimes for which he is charged.

Whether or not the evidence regarding the defendant's alibi shows that the defendant believed that he was guilty and the significance, if any, to be given to this evidence are matters for you, the jury, to decide.

CONCEALMENT OR DESTRUCTION OF EVIDENCE

You have heard testimony that during and after the crime was committed, the defendant may have destroyed or concealed, or attempted to destroy or conceal, certain evidence.

If you believe that the defendant engaged in this conduct, then you may consider this conduct, along with all the other evidence, in deciding whether the government has proved beyond a reasonable doubt that the defendant committed the crimes charged. This conduct may indicate that he thought he was guilty of the crimes charged and was trying to avoid punishment. On the other hand, an innocent person may engage in such conduct for some other reason.

Whether or not this evidence causes you to find that the defendant was conscious of his guilt of the crimes charged and whether that indicates that he committed the crimes charged is entirely up to you as the sole judges of the facts.

DEFENDANT TESTIFYING

You have observed that the defendant testified in this case. The defendant has a constitutional right not to testify if he chooses not to. The defendant does not have to testify, and the government may not call him as a witness. However, the defendant is, of course, permitted to take the witness stand on his own behalf.

You should evaluate the defendant's testimony just as you would the testimony of any other witness.

IMPERMISSIBLE INFERENCES WITH REGARD TO DEFENDANT

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

You also may not infer that a 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.

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.

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.

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.

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 OFFENSES

"IN OR ABOUT" EXPLAINED

The indictment charges that the offenses were committed "in or about" certain dates. Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed on dates reasonably near the dates alleged in the indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

AIDING AND ABETTING

Under a federal statute called the aiding and abetting statute, 18 U.S.C. § 2, the defendant is guilty of an offense if he "aids, abets, counsels, commands, induces, or procures [the] commission" of the offense charged against the defendant, or if the defendant "willfully causes an act to be done which if directly performed by him or another would be an offense" as charged against the defendant.

Under this statute, it is not necessary for the government to show that the defendant himself physically committed the crimes with which he is charged in order for the government to sustain its burden of proof. A person who aids and abets another to commit an offense is just as guilty of that offense as if he committed it himself.

Accordingly, you may find the defendant guilty of the offenses charged if you find beyond a reasonable doubt that another person actually committed the offense with which the defendant is charged and that the defendant aided or abetted that person in the commission of the offense.

As you can see, the first requirement is that you find that another person has committed the crime charged. Obviously, no one can be convicted of aiding or abetting

the criminal acts of another if no crime was committed by the other person in the first place. But if you do find that a crime was committed, then you must consider whether the defendant aided or abetted the commission of that crime.

In order to aid or abet another to commit a crime, it is necessary that the defendant knowingly associate himself in some way with the crime and that he participate in the crime by doing some act to help make the crime succeed. A person acts knowingly if that person acts intentionally and with knowledge, and not because of ignorance or carelessness. Whether the defendant acted knowingly may be proven by the defendant's words and conduct and by all the facts and circumstances supplied by the evidence in this case.

To establish that the defendant participated in the commission of the crime, the government must prove beyond a reasonable doubt that the defendant engaged in some affirmative conduct or overt act for the specific purpose of bringing about that crime.

The mere presence of the defendant when or where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or merely associating with others who were committing a crime is not sufficient to establish aiding and abetting. One who has no knowledge that a crime is being committed or is about to be committed but inadvertently does something that aids in the commission of that crime is not an aider and abettor. An aider and abettor must know that the crime is being committed and act in a way which is intended to bring about the success of the criminal venture.

To determine whether the defendant aided or abetted the commission of the crime with which he is charged, ask yourself these questions:

Did he participate in the crime charged as something he wished to bring about?
Did he knowingly associate himself with the criminal venture?
Did he seek by his actions to make the criminal venture successful?

If he did, then the defendant is an aider and abettor, and therefore guilty of the offense. If, on the other hand, your answer to any one of these questions is "no," then the defendant is not an aider and abettor, and you cannot find him guilty of the charges in the

indictment on this basis. In other words, if you conclude that the defendant did not act as an aider or abetter in the commission of the offenses charged, then the defendant can be found guilty of these offenses only if you, the jury, determine that the government has proven beyond a reasonable doubt that the defendant himself committed the offenses charged in the indictment.

COUNT ONE: CONSPIRACY TO DISTRIBUTE

Count One of the indictment charges the defendant with knowingly and willfully conspiring to distribute heroin, a Schedule I controlled substance, and cocaine and cocaine base, both Schedule II controlled substances, in violation of 21 U.S.C. §§ 841(a)(1) and 846. Count One also charges that the conspiracy to distribute cocaine base involved 280 grams or more of that substance.

I instruct you that, as a matter of law, heroin is a Schedule I controlled substance and that cocaine and cocaine base are Schedule II controlled substances. Cocaine base is also known as crack and is a different drug than cocaine which is also known as cocaine powder.

Section 841(a)(1) makes it a crime for anyone to knowingly or intentionally distribute a controlled substance. Section 846 makes it a separate offense for anyone to conspire or agree with someone else to distribute controlled substances in violation of Section 841(a)(1). Under the law, a "conspiracy" is an agreement of two or more persons to join together to accomplish some unlawful purpose.

In order to find the defendant guilty of Count One, you must find that the government has proved beyond a reasonable doubt the following essential elements:

FIRST: That two or more persons, in some way or manner, entered into an agreement or conspiracy to try to accomplish the unlawful plan charged; and

SECOND: That the defendant knowingly and willfully became a member of such conspiracy.

If, and only if, you find that the government has proven these two elements, then you must consider whether the government has proven beyond a reasonable doubt the

quantity of cocaine base involved in the offense. I will now explain these elements in more detail.

COUNT ONE: FIRST ELEMENT

The first element the government must prove beyond a reasonable doubt is that two or more persons entered into the unlawful agreement charged in Count One, that is, from in or about March 2011 to in or about July 2011, the defendant conspired with others to distribute heroin, cocaine, and cocaine base.

In order for the government to satisfy this element, it must prove that there was a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act. You need not find that the alleged members of the conspiracy actually met and entered into any express or formal agreement. You need not find that the alleged members stated in words or writing what the object or purpose of the conspiracy was, or every precise detail of the scheme. The agreement may only consist of a mutual understanding that the members would commit some illegal activity by means of a common plan or course of action, as alleged in Count One.

There may or may not be direct proof of the agreement. However, because a conspiracy is sometimes characterized by secrecy, you may or may not infer its existence from the circumstances and the conduct of the parties involved. You may therefore consider the actions and statements of all of those you find to be participants as proof that a common design existed for acting together to accomplish an unlawful purpose. Acts that may seem innocent when taken individually may indicate guilt when viewed collectively and in light of the circumstances.

Coconspirators need not be charged with the crime of conspiracy in order for you to find that the defendant had an agreement with other individuals to commit the illegal act charged in Count One.

COUNT ONE: SECOND ELEMENT

The second element the government must prove beyond a reasonable doubt is that the defendant knowingly and willfully became a member of the conspiracy. If you are

satisfied that the conspiracy charged in Count One existed, then you must next decide whether the defendant knowingly and willfully joined the conspiracy with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective.

You must find that the defendant joined the conspiracy with an awareness of at least some of its basic aims and purposes, and with the intent of aiding in the accomplishment of those ends, in order to satisfy the knowledge and intent element of the conspiracy charge. The government must prove beyond a reasonable doubt that the defendant acted with the specific intent to distribute a controlled substance. Proof of such intent need not be direct. Intent may be proved by circumstantial evidence alone.

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

The fact that acts of the defendant, without knowledge of the conspiracy, merely happen to further the purposes or objectives of the conspiracy does not make the defendant a member. The defendant's knowledge of the conspiracy may be established by his own acts or statements, as well as those of the other alleged coconspirators.

The defendant need not have known the identities of each and every member, nor have been fully informed of all of their activities, nor all of the details of the conspiracy.

The defendant need not have joined in all of the conspiracy's unlawful objectives.

The extent of the defendant's participation has no bearing on his guilt. A conspirator's liability is not measured by the extent or duration of his participation. Indeed, each member may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor roles in the scheme. The law does not require that each participant in the conspiracy play an equal role.

If the evidence establishes beyond a reasonable doubt that the defendant knowingly and willfully entered into an agreement to commit the substantive offense charged in Count One of the indictment, the fact that the defendant did not join the agreement at its beginning, did not know all of the details of the agreement, did not participate in each act of the agreement, or did not play a major role in accomplishing the unlawful goal is not important to your decision regarding membership in the conspiracy.

However, mere association with others, mere presence at the place where a crime takes place or is discussed, or knowing about criminal conduct, does not, in and of itself, make someone a member of the conspiracy. Also, proof that the defendant had a financial interest in the outcome of a scheme, in and of itself, does not suffice to prove membership. Presence or association with conspirators and financial interest, however, are factors that you may consider among others to determine whether the defendant was a member of the conspiracy.

In sum, the government must prove beyond a reasonable doubt that the defendant, with an understanding of the unlawful character of the conspiracy, intentionally engaged, advised, or assisted in it for the purpose of furthering the illegal undertaking. He thereby becomes a knowing and willing participant in the unlawful agreement. In other words, he becomes a conspirator.

COUNT ONE: "KNOWINGLY" DEFINED

A person acts knowingly if that person acts intentionally and with knowledge, and not because of ignorance or carelessness. Whether the defendant acted knowingly may be proven by the defendant's words and conduct and by all the facts and circumstances supplied by the evidence in this case.

COUNT ONE: "WILLFULLY" DEFINED

To act willfully means to do an act on purpose, and not inadvertently or by mistake or accident. Whether the defendant acted willfully may be proven by the defendant's words and conduct and by all the facts and circumstances supplied by the evidence in this case.

COUNT ONE: "DISTRIBUTION" DEFINED

The word "distribute" means to deliver a controlled substance. "Deliver" is defined as 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 be caused 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 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 and delivering the drugs, may constitute distribution. In short, distribution requires a concrete involvement in the transfer of drugs.

COUNT ONE: AMOUNT OF DRUGS

If you, the jury, find that the government has not proven beyond a reasonable doubt the elements of the conspiracy charged in Count One, then you must indicate that you find the defendant not guilty of Count One on the special verdict form that has been provided for you. You will then answer no further questions as to Count One.

If you find that the government has proven beyond a reasonable doubt the elements of the conspiracy charged in Count One, then there are several more issues you must decide with regard to Count One, and you, the jury, must indicate on the special verdict form provided for the jury's determinations of these issues.

Count One charges the defendant with conspiring to distribute 280 grams or more of a mixture or substance containing a detectable amount of cocaine base. The government must prove this quantity of cocaine base beyond a reasonable doubt.

The government does not have to prove that the defendant directly handled or distributed the particular quantity alleged, although you may consider that evidence along with other evidence to assess the quantity element. The government can prove the defendant is responsible for the quantity involved in a conspiracy in three ways.

First, the government can offer evidence that proves beyond a reasonable doubt that the defendant personally and directly participated in the possession or distribution of the drugs in question. With regard to this type of proof, the government need not prove

that the defendant knew the exact amount of drugs in question as long as the government proves beyond a reasonable doubt that the defendant knew the drugs in question were cocaine base and that the amount of cocaine base was 280 grams or more.

Second, the government can offer evidence that proves beyond a reasonable doubt that the defendant knew that the conspiracy involved a particular quantity of a controlled substance or substances during the time period that the defendant participated in the conspiracy.

Third, the government can offer evidence that proves beyond a reasonable doubt that the conspiracy involved a particular quantity of a controlled substance or substances during the time period that the defendant participated in the conspiracy and that, based on all of the circumstances, it was reasonably foreseeable to the defendant that the conspiracy involved the particular quantity.

With regard to each of these types of proof, the government must prove beyond a reasonable doubt that the conspiracy at issue is the one described in Count One.

Remember, you should address this issue and complete the form only if you find the essential elements of the conspiracy alleged in Count One have been established. If you decide that the government has not proven beyond a reasonable doubt that the charged conspiracy involves 280 grams or more of cocaine base, then you must consider whether the conspiracy involved either (a) less than 280 grams but 28 grams or more of cocaine base, or (b) less than 28 grams of cocaine base. If you find that the government has proven beyond a reasonable doubt the quantity of cocaine base involved in the conspiracy charged in Count One, then you, the jury, must indicate your findings as to the quantity of cocaine base proven by the government on the special verdict form provided.

COUNT TWO: USE OR POSSESSION OF A FIREARM DURING A DRUG TRAFFICKING CRIME

GENERAL EXPLANATION OF COUNT TWO

Count Two of the indictment charges the defendant with possessing a firearm in furtherance of a drug trafficking crime, or using and carrying such firearm during and in

relation to such crime, and that in the course of this conduct the defendant discharged a firearm and caused the death of Melissa Barratt by murder through the use of a firearm.

Count Two has four distinct parts, each with its own elements. Two parts address whether the defendant possessed a firearm in furtherance of a drug trafficking crime, or used and carried such firearm during and in relation to such crime. The third part charges the defendant with causing the death of Melissa Barratt by murder through the use of a firearm. And the fourth part addresses whether the defendant discharged the firearm.

The offense is charged under 18 U.S.C. §§ 924(c) and 924(j). Section 924(c) provides that:

> [A]ny person who, during and in relation to any . . . drug trafficking crime . . . for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall [be guilty of a crime].

Further, Section 924(c) provides that it is a crime if the "firearm [was] discharged" while the person used or carried the firearm during and in relation to a drug trafficking crime or possessed the firearm in furtherance of that crime. Additionally, Section 924(j) provides that:

> [A] person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall . . . if the killing is a murder . . . be [guilty of a crime].

In order for you to find the defendant guilty of the Section 924(c) part of Count Two, the government must prove beyond a reasonable doubt that that he violated Section 924(c) by committing a drug trafficking crime while using or carrying a firearm during and in relation to that crime, or possessing a firearm in furtherance of such crime.

In order for you to find the defendant guilty of the Section 924(j) part of Count Two, the government must prove beyond a reasonable doubt that during the course of the violation of 18 U.S.C. § 924(c), the defendant caused the death of Melissa Barratt through the use of a firearm by murder.

If you find the defendant guilty of 18 U.S.C. § 924(c) (using or carrying during and in relation to or possessing a firearm in furtherance of Count One) beyond a

reasonable doubt, you must find the defendant guilty of that offense, even if you have found him not guilty of causing the death of Melissa Barratt through the use of a firearm by murder in violation of 18 U.S.C. § 924(j). This is because Section 924(c) is a lesser-included offense of Section 924(j). A lesser-included offense is one whose elements are also elements of the greater offense, but the lesser included offense is composed of fewer elements. Accordingly, if you decide that the government has not proven beyond a reasonable doubt the Section 924(j) offense, you must still consider whether the defendant is guilty of the Section 924(c) offense.

ELEMENTS OF COUNT TWO

I will now describe to you the elements of an offense under 18 U.S.C. § 924(c), which is an essential part of the Section 924(j) offense charged in Count Two. You need to find that the government has established the two Section 924(c) elements beyond a reasonable doubt before you may consider whether the defendant caused the death of Melissa Barratt through the use of a firearm by murder.

There are two elements of a Section 924(c) violation, both of which the government must prove beyond a reasonable doubt:

FIRST: That the defendant committed a drug trafficking crime, here, the crime of conspiracy to distribute heroin, cocaine, and cocaine base, as alleged in Count One of the indictment; and

SECOND: That the defendant either (1) knowingly used or carried a firearm during and in relation to such crime, or (2) possessed a firearm in furtherance of such crime.

If, and only if, you find that the government has proven both of those elements beyond a reasonable doubt, then you must consider whether the government has proven beyond a reasonable doubt the second part of the charged offense under Section 924(j); that is, causing the death of a person by murder through the use of a firearm during the course of the Section 924(c) violation.

I will now explain these elements in more detail.

COUNT TWO: FIRST ELEMENT

The first element that government must prove beyond a reasonable doubt is that the defendant committed a drug trafficking crime for which he may be prosecuted in a court of the United States.

The defendant is charged in Count One of the indictment with committing the crime of conspiring to distribute drugs. The crime of conspiring to distribute drugs is a drug trafficking crime. However, it is for you to determine that the government has proven beyond a reasonable doubt that the defendant committed the crime of conspiring to distribute drugs as charged. No specific amount of drugs need be found by you to satisfy this element.

If upon all of the evidence you find that the government has failed to prove Count One beyond a reasonable doubt, then you will proceed no further in your deliberations on Count Two. Count Two is to be considered only if you first find the defendant guilty under Count One as charged.

In reaching your verdict on Count Two, you may consider the evidence of Count One only for the purpose of determining whether the elements of Count Two have been satisfied.

COUNT TWO: SECOND ELEMENT

The second element the government must prove beyond a reasonable doubt is that the defendant knowingly used or carried a firearm during and in relation to, or knowingly possessed a firearm in furtherance of, the commission of the drug trafficking crime charged in Count One.

You must find beyond a reasonable doubt either:

(1) That the defendant knowingly used or carried a firearm during and in relation to the drug trafficking crime charged in Count One, or

(2) That the defendant possessed a firearm in furtherance of the drug trafficking crime charged in Count One.

The government need not prove both that the defendant used or carried the firearm and that he possessed the firearm. The defendant is guilty under Section 924(c) if he

knowingly used or carried the firearm during and in relation to the crime, or if he possessed the firearm in furtherance of the crime.

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

COUNT TWO: "KNOWINGLY USED OR CARRIED" DEFINED

In order to prove that the defendant used the firearm, the government must prove beyond a reasonable doubt an active employment of the firearm by the defendant during and in relation to the commission of the drug trafficking crime. This does not mean that the defendant must actually fire or attempt to fire the weapon, although those would obviously constitute use of the weapon. Brandishing, displaying, or even referring to the weapon so that others present knew that the defendant had the firearm available if needed all constitute use of the firearm. However, the mere possession of a firearm at or near the site of the crime without active employment is not sufficient to constitute a use of the firearm.

In order to prove that the defendant carried the firearm, the government must prove beyond a reasonable doubt that the defendant had the weapon within his control in such a way that it furthered the commission of the drug trafficking crime or was an integral part of the commission of the crime.

You must also find that the defendant knowingly used or carried a firearm. Knowingly means that he used or carried the firearm purposely and voluntarily, and not by accident or mistake. It also means that he knew that the weapon was a firearm; however, the government is not required to prove that the defendant knew that he was breaking the law.

A person acts knowingly if that person acts intentionally and with knowledge, and not because of ignorance or carelessness. Whether the defendant acted knowingly may be proven by the defendant's words and conduct and by all the facts and circumstances supplied by the evidence in this case.

COUNT TWO: "POSSESSED THE FIREARM IN FURTHERANCE" DEFINED

In order to prove that the defendant possessed the firearm in furtherance of the drug trafficking crime, the government must prove that the defendant had possession of the firearm and that such possession was in furtherance of the drug trafficking crime charged in Count One.

In order to satisfy the essential element of "possession" beyond a reasonable doubt the government can prove either "actual possession" or "constructive possession."

Actual possession requires the government to show that the defendant physically possessed the firearm.

Constructive possession exists when the defendant knowingly has the power and intention to exercise dominion and control over the firearm, which may be shown by direct or circumstantial evidence. Mere presence in the vicinity of the firearm is not enough to satisfy the element of possession. Mere dominion and control over the place in which the firearm is found, by itself, is not enough to establish constructive possession when there is joint occupancy of a place. Instead, some evidence of "possession" is required besides mere joint occupancy of the place where the firearm was located. The defendant's knowledge and intent are crucial to determining whether he exercised constructive possession of the firearm. Constructive possession exists only when the defendant knowingly has both the power and the intention at a given time to exercise dominion and control over the firearm.

You must agree that the possession, as defined above, occurred in or about July 2011.

You must also find that the defendant possessed the firearm in furtherance of the drug trafficking crime charged in Count One. To possess a firearm in furtherance of a crime means that the defendant possessed the firearm and that the firearm helped forward, advance, or promote the commission of the crime. The mere possession of the firearm at the scene of the crime is not sufficient under this definition. The firearm must have played some part in furthering the crime in order for this element to be satisfied.

If you find, beyond a reasonable doubt, that the defendant is guilty of the first two elements of Count Two, he is guilty of an offense under 18 U.S.C. § 924(c), and you are to indicate that finding on the special verdict form.

COUNT TWO: CAUSING DEATH BY MURDER

If you find that the government has proven beyond a reasonable doubt the two elements that I have described, such that he violated 18 U.S.C. § 924(c), then you will turn to the second part of the charged offense: whether the defendant, while violating Section 924(c), caused the death of Melissa Barratt by murder through the use of a firearm and thereby violated Section 924(j).

The government must prove beyond a reasonable doubt that the defendant, while violating Section 924(c), caused the death of Melissa Barratt through the use of a firearm and that this constituted murder.

A defendant may "cause" the death of another by his own physical act, for example, by pulling a firearm's trigger himself. However, it is not necessary for the government to show that the defendant himself did the physical act necessary to kill another person. One who willfully causes an act to be done, which if directly performed by him would be a criminal offense, is just as guilty of that offense as if he committed it himself. If you are persuaded beyond a reasonable doubt that the defendant caused the death of Melissa Barratt with a firearm during the course of a § 924(c) offense, intending that she be killed, then the defendant caused the death of another for purposes of the statute.

A defendant will "use" a firearm if the government proves beyond a reasonable doubt the defendant's active employment of the firearm. This does not mean that the defendant must actually fire or attempt to fire the weapon, although those would obviously constitute use of the weapon. Brandishing, displaying, or even referring to the weapon so that others present knew that the defendant had the firearm available if needed all constitute use of the firearm. However, the mere possession of a firearm at or near the site of the crime without active employment is not sufficient to constitute a use of the firearm.

"Murder" is the unlawful killing of a human being with malice aforethought. The requisite malice can be found when the assailant acts with the subjective intent to kill or with awareness of a serious risk of death or serious bodily harm.

To act willfully means to do an act on purpose, and not inadvertently or by mistake or accident. Whether the defendant acted willfully may be proven by the defendant's words and conduct and by all the facts and circumstances supported by the evidence in this case.

If you find the defendant guilty beyond a reasonable doubt of causing the murder of Melissa Barratt, then you are to indicate that finding on the special verdict form.

COUNT TWO: DISCHARGE OF A FIREARM

Lastly, if you find that the government has proven beyond a reasonable doubt that the defendant is guilty of a crime under Section 924(c), then there is one more issue you must consider, and you must indicate on the special verdict form provided for your determination of this final issue.

Count Three also charges the defendant with discharging a firearm while either using or carrying the firearm during and in relation to the crime charged in Count One, or while possessing the firearm in furtherance of the crime charged in Count One. You must consider whether the defendant discharged the firearm while violating Section 924(c). This means that you must determine whether the defendant himself discharged a firearm while he used or carried that firearm during and in relation to the drug trafficking crime charged or while he possessed that firearm in furtherance of that crime. The government must prove beyond a reasonable doubt that the defendant discharged the firearm.

If you find the defendant guilty beyond a reasonable doubt of discharging the firearm, then you must indicate that finding on the special verdict form. Remember, you will only consider this issue after you have determined whether the government has proven beyond a reasonable doubt that the defendant is guilty of a crime under Section 924(c).

COUNT THREE:

POSSESSION OF A FIREARM IN FURTHERANCE OF A DRUG CRIME

Count Three of the indictment charges that in or about July 2011 the defendant with knowingly possessing a firearm, that is, a Desert Eagle .357 caliber pistol, in furtherance of a drug trafficking crime. The relevant portion of the statute is contained in 18 U.S.C. § 924(c), which provides:

> [A]ny person who, in furtherance of ['a drug trafficking crime . . . for which the person may be prosecuted in a court of the United States'] possesses a firearm, shall [be guilty of a crime].

In order to find the defendant guilty of Count Three, you must find that the government has proved beyond a reasonable doubt the following essential elements:

FIRST: That the defendant committed a drug trafficking crime for which he might be prosecuted in a court of the United States, which, as charged in Count Three, is the distribution of a controlled substance; and,

SECOND: That the defendant knowingly possessed the firearm specified in Count Three in furtherance of that drug trafficking crime.

I will now explain these elements in more detail.

COUNT THREE: FIRST ELEMENT

The first element the government must prove beyond a reasonable doubt is that the defendant committed a predicate drug trafficking offense. **The predicate drug trafficking offense charged in Count Three is not the drug conspiracy charged in Count One**, but rather the predicate drug trafficking offense charged in Count Three is the distribution of a controlled substance in violation of 21 U.S.C. § 841(a). Thus, the government must prove beyond a reasonable doubt that the defendant engaged in the actual distribution of drugs.

COUNT THREE: "DISTRIBUTION" DEFINED

The word "distribute" means to deliver a controlled substance. "Deliver" is defined as 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 be caused 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 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 and delivering the drugs, may constitute distribution. In short, distribution requires a concrete involvement in the transfer of drugs.

COUNT THREE: SECOND ELEMENT

The second element the government must prove beyond a reasonable doubt is that the defendant knowingly possessed the firearm that is specified in Count Three in furtherance of the actual distribution of drugs.

First, you must find that the government has proven beyond a reasonable doubt that the defendant possessed the Desert Eagle .357 caliber pistol that is specified in Count Three.

Second, you must find that the government has proven beyond a reasonable doubt that the defendant possessed the firearm knowingly. Knowingly means that he carried the firearm purposely and voluntarily, and not by accident or mistake. It also means that he knew that the weapon was a firearm; however, the government is not required to prove that the defendant knew that he was breaking the law.

A person acts knowingly if that person acts intentionally and with knowledge, and not because of ignorance or carelessness. Whether the defendant acted knowingly may be proven by the defendant's words and conduct and by all the facts and circumstances supplied by the evidence in this case.

Third, you must find that the government has proven beyond a reasonable doubt that the defendant possessed the firearm in furtherance of the crime charged, which is the distribution of drugs. To possess a firearm in furtherance of a crime means that the defendant possessed the firearm and that the firearm helped forward, advance, or promote the commission of the crime. The mere possession of the firearm at the scene of the crime is not sufficient under this definition. The firearm must have played some part in furthering the crime in order for this element to be satisfied.

COUNT THREE: "POSSESSION" DEFINED

In order to satisfy the essential element of "possession" beyond a reasonable doubt the government can prove either "actual possession" or "constructive possession."

Actual possession requires the government to show that the defendant physically possessed the firearm.

Constructive possession exists when the defendant knowingly has the power and intention to exercise dominion and control over the firearm, which may be shown by direct or circumstantial evidence. Mere presence in the vicinity of the firearm is not enough to satisfy the element of possession. Mere dominion and control over the place in which the firearm is found, by itself, is not enough to establish constructive possession when there is joint occupancy of a place. Instead, some evidence of "possession" is required besides mere joint occupancy of the place where the firearm was located. The defendant's knowledge and intent are crucial to determining whether he exercised constructive possession of the firearm. Constructive possession exists only when the defendant knowingly has both the power and the intention at a given time to exercise dominion and control over the firearm.

You must all agree that the defendant's possession of the Desert Eagle firearm occurred at the same time as the actual distribution of drugs in or about July 2011, as alleged in Count Three, to find the defendant guilty of this offense. If you find that the government has not proven each of the essential elements of Count Three beyond a reasonable doubt, you must find the defendant not guilty.

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. You may not use your notes as authority to persuade your fellow jurors as to what a witness did or did not say. 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.

RECOLLECTION OF EVIDENCE

Let me remind you that in deliberating upon your verdict, you are to rely solely and entirely upon your own memory of the testimony.

If, during your deliberations, you are unable to recall with any degree of accuracy, a particular part of the testimony, or a part of these instructions, you may do the following:

(1) Write out your question, and have the foreperson sign it;

(2) Knock on the door of the jury room; and

(3) Deliver your note to the Court Officer to give to me.

After the attorneys have been consulted, and the record has been reviewed, I will decide what action to take, and I will tell you my ruling.

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 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.

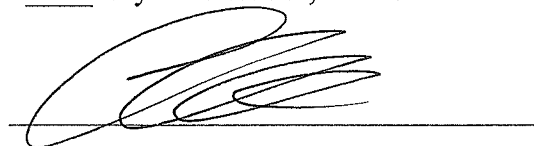
To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous regarding each element of the offense.

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. 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   as your foreperson.

Dated at Rutland, in the District of Vermont, this 1st day of October, 2013.



Christina Reiss, Chief Judge
United States District Court