

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 1:12-cr-110
	:	
JAMES COLLINS,	:	
	:	
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 as jurors to accept these instructions of law and apply them to the facts as you determine them from the evidence in the case. Nothing I say in these instructions is an indication that I have any opinion about the facts of the case. It is not my function to determine the facts, but rather yours.

This case is a criminal prosecution brought by the United States against the defendant, James Collins. The Superseding Indictment charges one count of knowingly carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A), one count of knowingly and intentionally possessing with intent to distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and four counts of knowingly and intentionally distributing a controlled substance in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C).

All parties expect that you will carefully and impartially consider all of the evidence, follow the law, and reach a just verdict, regardless of the consequences.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cellphone, smartphone, iPhone, Blackberry or computer, the internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence

you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

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. The Superseding 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 Superseding 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 defendant's denial of guilt by his "not guilty" plea. 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 on 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 fair and impartial consideration of all the evidence against the defendant, 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.

The law presumes that a 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 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 you the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, and any exhibits that have been admitted into evidence. Statements and arguments of counsel are not evidence in the case. Any evidence to which an objection was sustained by the Court must be disregarded. 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 consider 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.

The second type, 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. 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.

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.

Anything you have seen or heard outside the courtroom is not evidence, and must be entirely disregarded. 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.

Admission by a Defendant

There has been evidence 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.

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. 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.

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.

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.

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.

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.

Confidential Informant

The government used a confidential informant in this case. There is evidence that the state of Vermont dismissed a charge against the witness in exchange for his assistance to the government. I instruct you that there is nothing improper in the government's use of informers and, indeed, certain criminal conduct would never be detected without the use of informers. You, therefore, should not concern yourselves with how you personally feel about the use of informers, 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 informers.

On the other hand, an informant's testimony must be examined with greater scrutiny than the testimony of an ordinary witness. You should consider whether he received any benefits or promises from the government which would motivate him to testify falsely against the defendant. For example, an informant may believe he will only continue to receive benefits if he produces evidence of criminal conduct. If you decide to accept the testimony, after considering it in light of all the evidence of this case, then you may give it whatever weight, if any, you find it deserves.

Use of Drugs by A Witness

There has been evidence introduced at the trial that the confidential informant the government called as a witness was using drugs during the cooperation period. There is nothing improper about calling such a witness to testify about events within his personal knowledge. However, testimony from such a witness 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 the confidential informant, 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.

Recordings and Transcripts

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

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

The recordings and transcripts are available to you in the courtroom if you wish to have them replayed.

Other Acts

You are here only to determine whether the defendant is guilty or not guilty of the charges in the Superseding Indictment. Your determination must be made only from the evidence in the case. The defendant is not on trial for any conduct or offense not charged in the Superseding Indictment. You may consider evidence about the acts, statements, and intentions of others, or evidence about other acts of the defendant only as they relate to the charges against the defendant in the Superseding Indictment. You may not consider such evidence for any other purpose. Specifically, you may not consider it as evidence that the defendant is of bad character or has a propensity to commit crime.

Consider Each Count Separately

A separate crime or offense is charged in each count of the Superseding Indictment. Each charge against the defendant, and any evidence pertaining to it, should be considered separately. The fact that you find the defendant guilty or not guilty of one of the charged offenses should not control your verdict as to any other charged offense against the defendant.

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, 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.

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

Defendant Not Testifying

The defendant did not testify in this case. A defendant has a constitutional right not to do so. He does not have to testify, and the government may not call him as a witness. A defendant's decision not to testify raises no presumption of guilt and does not permit you to draw any unfavorable inference. Therefore, in determining whether the defendant is guilty or not guilty of the crimes charged, you are not to consider, in any manner, the fact that he did not testify. Do not even discuss it in your deliberations.

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.

Copies of these instructions will go with you into the jury room for your use.

The Essential Elements of the Charge: Count 2

Count 1, the gun charge is to be considered only if you first find the defendant guilty beyond a reasonable doubt of Count 2 as charged. You may not consider for the purposes of the gun charge evidence which relates to any count other than Count 2. I suggest you first consider Count 2 of the Superseding Indictment. If, upon all the evidence, you find the government has failed to prove defendant committed the drug trafficking crime charged in Count 2, you will proceed no further on Count 1.

James Collins is charged in Count 2 with possession with the intent to distribute cocaine base. To sustain its burden of proof for the crime of possession with intent to distribute a controlled substance, the government must prove the following three elements beyond a reasonable doubt:

- (1) that James Collins knowingly and intentionally possessed a controlled substance, as charged in Count 2 of the Superseding Indictment; and
- (2) that James Collins, at the time of the possession, knew the substance was a controlled substance; and
- (3) that James Collins, at the time of the possession, intended that he or others would distribute the controlled substance.

I instruct you that cocaine base is a Schedule II controlled substance.

Definition of Possession

The word "possess" means to own or to exert control over. The word "possession" can take on several different, but related, meanings.

The law recognizes two kinds of "possession" -- actual possession and constructive possession. A person who knowingly has direct physical control over a thing at a given time is in actual possession of it. A person who, although not in actual possession, knowingly has dominion and control over the place where a thing is located and has the power and intention to exercise control over that thing, is in constructive possession of it.

The law recognizes also that "possession" may be sole or joint. If one person alone has actual or constructive possession of a thing, then possession is sole. If two or more persons share actual or constructive possession of a thing, then possession is joint.

You may find the element of "possession" as that term is used in these instructions is present if you find beyond a reasonable doubt that James Collins had actual or constructive possession of a controlled substance, either alone or jointly with others.

The Essential Elements of the Charge: Count 1

The Superseding Indictment charges the defendant with carrying a firearm during and in relation to the commission of a drug trafficking crime. In order to find the defendant guilty of this crime, you must find the government has proved each of the following essential elements of the charge beyond a reasonable doubt:

(1) that James Collins committed the drug trafficking crime charged in Count 2 of the Superseding Indictment; and

(2) that James Collins knowingly carried a firearm during and in relation to the commission of the crime charged in Count 2.

First Element: Commission of the Predicate Crime

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

Defendant is charged in Count 2 of the Superseding Indictment with committing the crime of possession with intent to distribute cocaine base. I instruct you that the crime of possession with intent to distribute cocaine base 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 possession with intent to distribute cocaine base, as charged in Count 2.

Second Element: Knowingly Carrying a Firearm During and in Relation to the Commission of the Predicate Crime

The second element the government must prove beyond a reasonable doubt is that the defendant knowingly carried a firearm during and in relation to the commission of the crime charged in Count 2.

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

To prove the defendant carried the firearm, the government must prove beyond a reasonable doubt that, during and in relation to the crime charged in Count 2, the defendant either had physical possession of the firearm or moved the firearm from one place to another. The government may establish the defendant carried the firearm if it proves beyond a reasonable doubt that he knowingly carried the firearm on his person or that he knowingly possessed and conveyed the firearm in a vehicle.

To prove that James Collins carried a firearm in relation to the crime charged in Count 2, the government must prove beyond a reasonable doubt that the firearm had some purpose, role, or effect with respect to the drug trafficking crime. It is not sufficient to show the firearm's presence resulted from accident or coincidence. You may find the government has proven the defendant carried the firearm in relation to the crime charged in Count 2 if you find that it facilitated or had the potential to facilitate the drug trafficking crime. You may consider the

proximity of the firearm to drugs, its proximity and accessibility to the defendant, and any statements the defendant made about the firearm.

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

The Essential Elements of the Charge: Counts 3-6

Counts 3 through 6 of the Superseding Indictment charge the defendant with distributing a controlled substance. To sustain its burden of proof for the crime of distribution of a controlled substance, the government must prove the following two elements beyond a reasonable doubt:

(1) James Collins knowingly and intentionally distributed a controlled substance, as charged in the Superseding

Indictment; and

(2) James Collins, at the time of the distribution, knew the substance distributed was a controlled substance.

I instruct you that cocaine base is a Schedule II controlled substance.

Definition of Distribution

The word "distribute" means to deliver a narcotic. "Deliver" is defined as the actual, constructive, or attempted transfer of a narcotic. 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, narcotics.

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.

Definition of Knowingly and Intentionally

With respect to Counts 2 through 6 of the Superseding Indictment, you have been instructed that in order to sustain its burden of proof, the government must prove the defendant acted knowingly and intentionally. A person acts knowingly if that person acts intentionally and voluntarily and with knowledge, and not because of ignorance, mistake, accident, or carelessness. Whether a defendant acted knowingly may be proven by the defendant's words and conduct and by all the facts and circumstances surrounding this case.

A person acts intentionally if that person acts deliberately and purposefully, and not because of mistake or accident.

"On or About" Explained

The Superseding Indictment in this case charges that the offenses were committed "on or about" certain dates.

Although it is necessary for the government to prove beyond a reasonable doubt that an offense was committed on a date reasonably near the date alleged in the indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

Punishment

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

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 the 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 the defendant in this case. You should not consider the consequences of a guilty or not guilty determination.

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.

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. If a vote is to be taken, your foreperson will ensure that it is done. A special 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 charges against the defendant. 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 security officer who will bring it to my attention. I will then confer with the attorneys and 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 reveal your numerical division, if any. You should also never communicate the subject matter of your note or your deliberations to any member of the Court staff.