UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
v.	:	2:98-CR-67-01
	:	
JARED MARSHALL	:	

JURY CHARGE

Members of the Jury:

This case is a criminal prosecution brought by the United States against the defendant Jared Marshall. The Grand Jury indictment charges the defendant in three counts. You will receive a copy of the indictment to take with you into the jury room.

Count I of the indictment charges that the defendant, Jared Marshall, conspired, from approximately December 16, 1997 to on or about June 17, 1998, in the District of Vermont and elsewhere, to knowingly and intentionally possess with the intent to distribute methamphetamine, a Schedule II controlled substance.

Count II charges that the defendant, Jared Marshall, on or about June 17, 1998 in the District of Vermont, did knowingly and intentionally possess with the intent to distribute a quantity of methamphetamine, a schedule II controlled substance in violation of 21 U.S.C. § 841(a)(1).

Count III charges the defendant, Jared Marshall, on or about June 17, 1998, in the District of Vermont, did knowingly and intentionally use a communication facility, the United States mail, in committing or causing the commission of an act

constituting a felony under subchapter I Chapter 13, Title 21, United Stated Code, that being the knowing and intentional possession with the intent to distribute methamphetamine, a Schedule II controlled substance. (21 U.S.C. § 843(b))

ROLE OF INDICTMENT

At this time, I would like to remind you of the function of a grand jury indictment. An indictment is merely a formal way to accuse the defendant of a crime preliminary to trial. The indictment is not evidence. The indictment does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the nature of the charges against the defendant.

The defendant pleaded not guilty to all of the charges 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 denials made by the not guilty plea. You are to perform this duty without bias or prejudice against the defendant or the prosecution.

MULTIPLE COUNTS

A separate crime or offense is charged in each of the three counts of the indictment. Each charge and the evidence pertaining to each charge should be considered separately. You must return separate verdicts on each count in which the defendant is charged. The fact that you may find the defendant not guilty or guilty as to one of the offenses charged should not control your verdict as to any other offense

charged.

REASONABLE DOUBT

The law presumes a defendant to be innocent of a crime. Thus, although accused, a defendant begins the trial with a "clean slate" -- with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against a defendant. So the presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act. 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.

You must remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

So if, after careful and impartial consideration of all the evidence in the

case, you have a reasonable doubt that the defendant is guilty of an offense charged in the indictment, then you must acquit the defendant of that offense. Unless the government proves, beyond a reasonable doubt, that the defendant has committed each and every element of the offense charged in the indictment, you must find the defendant not guilty of the offense. Furthermore, if you view the evidence in the case as reasonably permitting either of two conclusions as to any count -- one of innocence, the other of guilt, you must, of course, adopt the conclusion of innocence and find the defendant not guilty of that count.

As I have instructed you, the law presumes that a defendant is innocent of the charges against him. The presumption of innocence lasts throughout the trial and ends only if you, the jury, find beyond a reasonable doubt that the defendant is guilty. Should the Government fail to prove the guilt of a defendant beyond a reasonable doubt, you must acquit the defendant.

EVIDENCE

You have seen and heard the evidence produced in this trial and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits that have been received in evidence, and all the facts which may have been admitted or stipulated. I would now like to call to your attention certain guidelines by which you are to evaluate the evidence.

There are two types of evidence which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a

witness testifies about something she or he knows by virtue of their own senses -- something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is its present existence or condition.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. There is a simple example of circumstantial evidence which is often use in this courthouse.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. As you have probably noticed, this courtroom has no windows. As you were sitting here, someone walked in with an umbrella which was dripping wet. Then a few minutes later another person also entered with a wet umbrella. Now, you cannot look outside of the courtroom and you cannot see whether it is raining. So you have no direct evidence of that fact. But on the combination of facts which I have asked you to assume, it would be reasonable and logical for you to conclude that it had been raining.

That is all there is to circumstantial evidence. You infer on the basis of reason and experience and common sense from one established fact the existence or non-existence of some other fact.

Circumstantial evidence is of no less value than direct evidence for it is a general rule that the law makes no distinction between direct evidence and circumstantial evidence but requires that your verdict must be based on all the evidence presented.

You may convict a defendant on the basis of circumstantial evidence alone, but only if that evidence convinces you of the guilt of that defendant beyond a reasonable doubt.

EXPERT WITNESSES

You have heard testimony from expert witnesses. An expert is allowed to express his or her opinion on those matters about which he or she has special knowledge and training. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts. In weighing the expert's testimony, you may consider the expert's qualifications, opinions, reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether to believe a witness' testimony. You may give the expert's testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept his or her testimony merely because he or she is an expert. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.

DEFENDANT NOT TESTIFYING

You may have observed that the defendant did not testify in this case. A defendant has a constitutional right not to do so. He does not have to testify, and the government may not call him as a witness. The defendant's decision not to testify raises no presumption of guilt and does not permit you to draw any unfavorable inference. Therefore, in determining a defendant's guilt or innocence of a crime

charged, you are not to consider, in any manner, the fact that the defendant did not testify. Do not even discuss it in your deliberations.

TESTIMONY AND ARGUMENTS EXCLUDED

I caution you that you should entirely disregard any testimony that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. The evidence that you will consider in reaching your verdict consists, as I have said, only of the sworn testimony of witnesses, the stipulations made by the government and the defendant, and all exhibits received in evidence.

During the course of the trial I occasionally asked questions of a witness in order to bring out facts not then fully covered in the testimony. You should not assume that I hold any opinion on matters to which my questions may have related. At all times, you, the jurors, are at liberty to disregard all questions and comments by me in making your findings as to the facts.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

Anything you have seen or heard outside the courtroom is not evidence, and must be entirely disregarded. You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited merely to the statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in light of your

experiences.

CREDIBILITY OF WITNESSES

You as jurors are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness, since you may accept or reject the testimony of any witness, in whole or in part. In weighing the testimony of the witnesses you have heard, you should consider their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if any; their resentment or anger toward the defendant, if any; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons may well hear or see things differently, or may have a different point of view regarding various

occurrences. Innocent misrecollection or failure of recollection is not an uncommon experience. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance, or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

In this case you have heard testimony from a number of witnesses. I am now going to give you some guidelines for your determinations regarding the testimony of the various types of witnesses presented to you in this case.

RACE, RELIGION, NATIONAL ORIGIN, GENDER OR AGE

The jury may not consider race, religion, national origin, gender or age of the defendant or any of the witnesses in its deliberations over the verdict or weight given to any evidence.

LAW ENFORCEMENT WITNESS

You have heard the testimony of several law enforcement officials. The fact that a witness may be employed by the federal, state or local government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that their testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

IDENTIFICATION TESTIMONY

One of the most important issues in this case is the identification of the defendant as the perpetrator of the crimes. The government has the burden of proving identity, beyond a reasonable doubt.

Identification testimony is an expression of belief on the part of the witness. Its value depends on the opportunity the witness had to observe the offender at the time of the offense and, later, to make a reliable identification of the offender.

I will only suggest to you that you should consider the following matters: Did the witness have the ability to see the offender at the time of the offense?; Has the witness' identification of the defendant as the offender been influenced in any way?; Has the identification been unfairly suggested by events that occurred since the time of the offense?; Is the recollection accurate?.

IMPERMISSIBLE TO INFER PARTICIPATION FROM ASSOCIATION

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

INFERENCE FROM CONTROL OVER PLACE WHERE FOUND

A defendant may own or have control over the place where the narcotics are found, such as an apartment or a vehicle. Where the defendant is the sole person

having such ownership or control, this control is significant evidence of the defendant's control over the drugs themselves, and thus of his constructive possession of the drugs. You should note, however, that the defendant's sole ownership or control of a residence or vehicle does not necessarily mean that the defendant had control and constructive possession of the drugs found in it.

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

FALSE EXCULPATORY STATEMENTS

Statements knowingly and voluntarily made by the defendant upon being informed that a crime had been committed or upon being accused of a criminal charge, may be considered by the jury. When a defendant voluntarily offers an explanation or voluntarily makes some statement tending to show his innocence and it is later shown that the defendant knew that the statement or explanation was false, the jury may consider this as showing a consciousness of guilt on the part of the defendant since it is reasonable to infer that an innocent person does not usually find

it necessary to invent or fabricate an explanation or statement tending to establish his innocence.

Whether or not evidence as to a defendant's explanation or statement points to a consciousness of guilt on his part and the significance, if any, to be attached to any such evidence, are matters exclusively within the province of the jury as the sole judges of the facts of this case.

In your evaluation of evidence of any exculpatory statement shown to be false, you may consider that there may be reasons -- fully consistent with innocence -- that could cause a person to give a false statement showing their innocence. Fear of law enforcement, reluctance to become involved, and simple mistake may cause a person who has committed no crime to give such a statement or explanation.

CONSCIOUS AVOIDANCE OF KNOWLEDGE

The government must prove beyond a reasonable doubt that the defendant knew that the materials he possessed were narcotics. If the defendant lacked this knowledge you must find him not guilty even if the government proves that the only reasons the defendant lacked such knowledge was because he was careless, negligent or even foolish in failing to obtain the knowledge.

However, it is not necessary for the government to prove to an absolute certainty that the defendant knew that he possessed narcotics. The defendant's knowledge may be established by proof that the defendant was aware of a high probability that the materials were narcotics unless, despite this high probability, the facts show that the defendant actually believed that the materials were not narcotics.

Knowledge that the materials were narcotics may be inferred from circumstances that would convince an average, ordinary person that this is the fact. Thus, although the government cannot satisfy its burden of proving the defendant's knowledge by showing that the defendant would have obtained such knowledge were he not careless, the government may satisfy its burden of proving the defendant's knowledge by proof that the defendant deliberately closed his eyes to what otherwise would have been obvious to him.

Thus if you find that the defendant acted with deliberate disregard of whether the materials he possessed were narcotics and with a conscious purpose to avoid learning the truth, the requirement of knowledge would be satisfied, unless, despite this deliberate ignorance, the defendant actually believe that the materials were not narcotics.

INSTRUCTIONS ON SUBSTANTIVE LAW OF THE CASE

Having told you 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.

"ON OR ABOUT" EXPLAINED

The indictment in this case charges in each count that a particular offense was committed "on or about" a certain date. It is not necessary for the government to prove that the offense was committed precisely on the date charged; however, it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in each specific count. For example, if the indictment charges that a specific crime occurred on June 1, 1998 and you find from the evidence beyond a reasonable doubt that the alleged crime occurred on a date reasonably near June 1, 1998, you should return a verdict of guilty on that charge.

Count 1

CONSPIRACY

I will begin my instructions on the law in this case by first explaining to you the charge of conspiracy. You will recall that the defendant was charged in Count I of the indictment with conspiring to possess with the intent to distribute methamphetamine, a Schedule II controlled

Federal law makes it a separate criminal offense for anyone to conspire or agree with someone else to do something which if actually carried out would constitute a drug offense. Section 841(a)(1) makes it a crime for anyone to knowingly or intentionally distribute or posses with the intent to distribute a controlled substance, in this case, methamphetamine.

I instruct you now that methamphetamine is a controlled substance and that it is a violation of this statute to possess with the intent to distribute this substance, and thus, it is a violation of the conspiracy statute to conspire to possess with the intent to distribute it.

ELEMENTS OF THE OFFENSE OF CONSPIRACY

A conspiracy is a kind of criminal partnership -- a combination or agreement of two or more persons to join together to accomplish some unlawful purpose. The crime of conspiracy to violate a federal law is an offense separate and distinct from the actual violation of any specific federal laws, which the law refers to as "substantive crimes."

Indeed, you may find a defendant guilty of the crime of conspiracy to commit an offense even if the substantive crime, in this case the possession with the intent to distribute methamphetamine, was not actually committed.

The essence of a conspiracy is the agreement itself. In order to establish conspiracy, the government does not have to prove that the objects of the conspiracy were carried out or that the conspirators actually succeeded in carrying out their unlawful plan. Nor is it necessary for the government to prove any specific overt acts as furthering the conspiracy in order for the offense of conspiracy to be complete.

The first element the government must prove is that two or more persons formed or entered into an unlawful agreement to possess with the intent to distribute methamphetamine as described in the indictment.

The second element that the government must establish is that the defendant knowingly and willfully became a member of the conspiracy, that is he entered into the unlawful agreement or understanding either at the time it was reached or at some later time when it was still in effect.

EXISTENCE OF AGREEMENT

In order for the government to prove the element of agreement, you need not find that the alleged members of the conspiracy met together and entered into any express or formal agreement. Similarly, you need not find that the alleged conspirators stated, in words or writing, what the scheme was, its object or purpose, or every precise detail of the scheme or the means by which its object or purpose was to

be accomplished. What the government must prove is 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. It is sufficient for the government to prove it was the purpose and intention of the defendant to distribute methamphetamine, regardless of whether he succeeded in accomplishing the objective of the conspiracy.

You may, of course, find that the existence of an agreement to disobey or disregard the law has been established by direct proof. However, since conspiracy is, by its very nature, characterized by secrecy, you may also infer its existence from the circumstances of this case and the conduct of the parties involved.

In a very real sense, then, in the context of conspiracy cases, actions often speak louder than words. In this regard, you may, in determining whether an agreement existed here, consider the actions and statements of all of those you find to be participants as proof that a common design existed on the part of persons charged to act together to accomplish an unlawful purpose.

MEMBERSHIP IN THE CONSPIRACY

The second element of the offense of conspiracy, which the government must prove beyond a reasonable doubt, is that the defendant knowingly and willfully became a member of the conspiracy. That is, in order for you to find the defendant guilty of the drug conspiracy alleged, the government must convince you he participated in what he knew to be a collective venture meeting the allegations of the

indictment.

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy so long as the co-conspirators agree on the essential nature of the plan. Membership in the conspiracy may be proven entirely by circumstantial evidence. However, a person who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Before you may find that the defendant entered into a conspiracy, the evidence in the case must show beyond a reasonable doubt he knew of the existence of the scheme alleged in the indictment and knowingly joined and willfully participated in it with the intent to advance or further some object or purpose of the conspiracy.

To act or participate "knowingly" is to act voluntarily and intentionally, and not because of mistake or accident or other innocent reason. The government's proof of knowledge is satisfied by proof that the defendant knew the essential objective of the conspiracy.

To act "willfully" means to act with the intent to do something the law forbids; that is to say, with a purpose to disobey or disregard the law. So if the defendant, with the understanding of the unlawful character of a plan, knowingly encourages, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant -- a conspirator.

One who willfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

You will recall my earlier instruction that in determining whether a conspiracy existed, you should consider the actions and declarations of all the alleged participants. However, in determining whether the defendant was a member of a conspiracy, you should consider only that individual's acts and statements. A defendant cannot be bound by the acts or declarations of other participants unless it is established that a conspiracy existed, and that he was one of its members.

DEFINITION OF POSSESSION

The legal concept of possession may differ from the everyday usage of the term, so I will explain it in some detail.

The law recognizes two kinds of possession: actual possession and constructive possession. Actual possession is what most of us think of as possession: that is, when a person knowingly has direct physical control or authority over something. However, a person need not have actual physical custody of an object in order to be in legal possession of it. "Constructive possession" occurs when a person does not have direct physical control over something, but can knowingly control it and intends to control it, sometimes through another person.

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

Possession of drugs cannot be found solely on the ground that a defendant was near or close to the drugs. Nor can it be found simply because a

defendant was present at a scene where drugs were involved, or solely because a defendant associated with a person who does control the drugs or the property where they are found. However, these factors may be considered by you, in connection with all other evidence, in making your decision whether the defendant possessed the drugs.

You may find that the element of possession is present if you find beyond a reasonable doubt that a defendant had actual or constructive possession, either alone or jointly with others, for any amount of time. If you find that the government has proven, beyond a reasonable doubt, that the defendant accepted or took actual or constructive possession of methamphetamine, you may find that the first element, possession of a controlled substance, has been proven.

KNOWING POSSESSION OF A CONTROLLED SUBSTANCE

The government must establish beyond a reasonable doubt that the defendant knew and intended that he possess a controlled substance, in this case, methamphetamine. A person acts knowingly and intentionally if he acts voluntarily, and not because of ignorance, mistake, accident, or carelessness.

Your decision about whether Jared Marshall conspired to possess with the intent to distribute methamphetamine, a controlled substance, involves a decision about the defendant's state of mind. Direct evidence of state of mind is obviously impossible, but you may infer what the defendant's state of mind was from a consideration of all the facts and circumstances shown by the evidence. Actions can speak louder and more clearly than words. Therefore, you may rely in part on

circumstantial evidence, for example, the defendant's behavior, in determining the defendant's state of mind.

INTENT TO DISTRIBUTE

The government must prove beyond a reasonable doubt that the defendant conspired to possess methamphetamine with the intent to distribute it. The phrase "with intent to distribute" means to intend or to plan in some way to deliver or to transfer possession or control over a thing to someone else.

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

Basically, what you are determining is whether the substance in the defendant's possession, if you found possession of a controlled substance, was for personal use or for the purpose of distribution. Often it is possible to make this determination from the quantity of drugs found in the defendant's possession. The possession of a large quantity of drugs, however, does not necessarily mean that a defendant intended to distribute them. On the other hand, a defendant may have intended to distribute drugs even if he did not possess large amounts of them. Other physical evidence, such a paraphernalia for the packaging or processing of drugs, can show such an intent. There might also be evidence of a plan to distribute. The same considerations that apply to your determination concerning whether the defendant knew that he possessed a controlled substance apply to your decision concerning

whether the defendant intended to distribute it.

Hence, you should make your decision whether a defendant intended to distribute methamphetamine from all of the evidence presented.

Count II

POSSESSION WITH INTENT TO DISTRIBUTE CONTROLLED SUBSTANCES

Count II of the indictment charges the defendant with knowingly and intentionally possessing with the intent to distribute a quantity of methamphetamine on June 17, 1998, in violation of the Drug Abuse Prevention and Control Act, 21 U.S.C § 841(a)(1), which makes it a crime "for any person knowingly and intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." For purposes of this Count, "possession," "knowing possession of a controlled substance" and "intent to distribute," have the same meaning as defined in Count I.

ELEMENTS OF THE OFFENSE

The elements of this crime which the government must prove beyond a reasonable doubt are:

(1) That the defendant knowingly and intentionally possessed with the intent to distribute the controlled substance described in the indictment, in this case methamphetamine; and

(2) The defendant knew that the substance was a controlled substance.

1. Methamphetamine: Controlled Substance

You are instructed as a matter of law that methamphetamine is a Schedule II controlled substance. You must ascertain whether the material in question was in fact methamphetamine. In so doing, you may consider all evidence in the case which may aid the determination of that issue, including the testimony of any expert or other witness who has testified either to support or to dispute the allegation that the material in question was a controlled substance. The nature of a substance such as methamphetamine need not be proved by direct evidence where circumstantial evidence establishes its identity beyond a reasonable doubt.

Quantity is not an element of the crime of possession with intent to distribute controlled substances. Therefore, it is not necessary for the government to prove a specific amount of the controlled substance that was possessed. It is enough that the government prove beyond a reasonable doubt that a measurable amount of methamphetamine was knowingly and intentionally possessed with intent to distribute.

2. Definition of Distribute; &
3. Definition of Knowingly and Intentionally

The government must prove beyond a reasonable doubt that the defendant, on or about the dates charged, possessed with the intent to distribute methamphetamine, knowingly and intentionally. The terms "possessed," "intent to distribute" and "knowingly and intentionally" have the same meaning in Count II as those terms were under Count I.

Count III

Count III of the indictment charges that on or about June 17, 1998, in the District of Vermont, the defendant, Jared Marshall, knowingly used a communication facility, that is the mail, with the intent to commit a federal narcotics felony.

Section 843(b) of Title 21 of the United States Code provides, in relevant part, that:

> [A]ny person [who] knowingly or intentionally use[s] any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II of this chapter . . . shall be guilty of an offense against the United States

In order to sustain its burden of proof for the crime of using a communication facility as charged in Count III of the indictment, the government must prove the following two essential elements beyond a reasonable doubt:

1. The defendant knowingly used a communication facility as that term is defined in these instructions; and

2 The defendant used the communication facility with the intent to commit or facilitate the commission of an illegal act involving drugs, namely possession with the intent to distribute methamphetamine.

COMMUNICATION FACILITY

The term "communication facility" as used in these instructions includes the mail.

FACILITATE THE COMMISSION

The term "facilitate the commission" as used in these instructions, means to assist or help someone do something or in some way make the task less difficult to accomplish.

NOTES

You have been permitted to take notes during the trial for use in your deliberations. You may take these notes with you when you retire to deliberate. They may be used to assist your recollection of the evidence, but your memory, as jurors, controls. Your notes are not evidence, and should not take precedence over your independent recollections of the evidence. The notes that you took are strictly confidential. Do not disclose your notes to anyone other than another juror. Your notes should remain in the jury room and will be collected at the end of the case.

CONCLUSION

I caution you, members of the jury, that you are here to determine the guilt or innocence of the defendant before you today solely from the evidence in this case. I remind you that the mere fact that the defendant was indicted is not evidence against him. Also, the defendant is not on trial for any act or conduct or offense not alleged in the Indictment. Neither are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

You should know that the punishment provided by law for the offenses

charged in the indictment is a matter exclusively within the province of the judge, and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

It is your duty as jurors to consult with one another and to deliberate. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with the other jurors. Do not hesitate to re-examine your own views and change your opinion if you think that you were wrong. But also do not surrender your honest convictions about the case solely because of the opinion of other jurors, or for the mere purpose of returning a verdict.

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

At this time, I would like to offer my sincere thanks to the alternates.

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience. After you have reached agreement as to each of the counts contained in the Indictment, you will have your foreperson record a verdict of guilty or not guilty as to each count of the Indictment. Your foreperson will then sign and date the verdict form and you will then return to the courtroom.

If, during your deliberations you should desire to communicate with the Court, please put your message or question in writing signed by the foreperson, and pass the note to the marshal who will then bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so

that I can speak with you. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

Also, copies of this charge will go with you into the jury room for your use.

I appoint _____ as your foreperson.

Dated, at Burlington, in the District of Vermont, this ___ day of February, 1998.

_____
William K. Sessions III
United States District Judge