

015

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

GAIL JONES

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CRIM NO.1:99-CR-20-01

CHARGE TO THE JURY

Members of the Jury:

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

Count I of the indictment charges defendant with possession with intent to distribute LSD found in the headliner of her car above a visor. Count II charges defendant with conspiracy to distribute LSD. Count III charges defendant with distribution of LSD as a result of the assistance she provided to an LSD transaction between Travis Dunn and Joe Mailett. Count IV charges that defendant herself actually distributed LSD to James Jones and Matt Rinaldi.

Role of the Indictment

At this time, I remind you of the function of a grand jury indictment. An indictment is merely a formal way to accuse a defendant of a crime preliminary to trial. The indictment is not evidence. It 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 charge against the defendant.

The defendant has pleaded not guilty to 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 defendant when he pleaded not guilty. You are to perform this duty without bias or prejudice against the defendant or the prosecution.

A separate crime is charged in each count of the indictment. The jury must consider separately each charge, and the evidence pertaining to each charge. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

Another defendant, Travis Dunn, is named in the indictment. The charges against defendant Travis Dunn have been removed from your consideration and are no longer before you for decision. Do not concern yourself with this development and do not speculate about it. The removal of this portion of the case must not influence your consideration of those portions of the case which you must decide.

Reasonable Doubt

The law presumes a defendant to be innocent of a crime. Therefore, although accused, a defendant begins the trial with a "clean slate," that is, with no evidence against him. Furthermore, 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 a defendant's guilt after careful and impartial consideration of all the evidence in the case.

The government is not required to 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. A 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 this case, you have a reasonable doubt that a defendant is guilty of an offense charged in the indictment, then you must acquit that 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 that offense.

As I have instructed you, the law presumes a defendant is innocent of the charge against him or her. 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 that defendant.

Government as a Party

You are to perform the duty of finding the facts without bias or prejudice as to any party. You are to perform your final duty with complete fairness and impartiality.

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.

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 any other party to a case. By the same token, it is entitled to no less consideration. All parties, whether government or individual, stand as equals before the Court.

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, 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. You may consider two types of evidence: direct and circumstantial. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts or circumstances pointing to the existence or non-existence of certain facts.

The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him or her not guilty.

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

Evidence: Testimony and Arguments Excluded

I caution you that you should entirely disregard any testimony which 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 only of the sworn testimony of witnesses and all exhibits that have been received in evidence.

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 this 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 proven, such reasonable inferences as you feel are justified in light of your experiences.

Evidence: Inference

During the trial you have heard the attorneys use the term "inference," and in their arguments they may have asked you to infer, on the basis of your reason, experience and common sense, from one or more established facts, the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact which you know exists.

Evidence: "On or About" -- Explained

The indictment charges that the offenses alleged were committed "on or about" a certain date.

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

Credibility of Witnesses

You, as jurors, are the sole judges of the credibility of 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 large 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. 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 also 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.

Impeachment by Felony Conviction- ~~XXXXXXXXXXXX~~

You have heard testimony of a witness who was previously convicted of a crime punishable by more than one year in jail or involving dishonesty or false statement. This prior conviction was put into evidence for you to consider in evaluating the witness' credibility. You may consider the fact that the witness who testified is a convicted felon in deciding how much of his or her testimony to accept and what weight, if any, it should be given.

Witnesses: Law Enforcement Witness

You have also heard the testimony of 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.

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.

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 or 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 or not 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 the case. You should not, however, accept his or her testimony merely because he or she is an expert. Not should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rest solely with you.

Admissions

There has been evidence in this case that the defendant made certain statements in which the government claims she admitted certain facts charged in the indictment. You have heard evidence of statements made by the defendant in conversations with individuals who have testified at this trial. These statements are known as admissions. You should first examine with great care whether each statement was made. You should then consider whether the statement was made voluntarily and knowingly. All such alleged statements or admissions should be disregarded entirely unless you find beyond a reasonable doubt that the admission was made knowingly and voluntarily.

In determining whether a statement was made voluntarily and knowingly, you should consider all circumstances in evidence surrounding the making of the statement. If you determine that a statement was made knowingly and voluntarily, you may give it such weight as you feel it deserves.

Impeachment of Defendant with Previous Felony

The defendant in a criminal case never has any duty or obligation to testify or come forward with any evidence. This is because the burden of proof beyond a reasonable doubt remains on the government at all times, and the defendant is presumed innocent.

In this case the defendant did testify and she was subject to cross-examination, like any other witness. You learned during her testimony that the defendant was previously convicted of a crime. The prior conviction was received into evidence for the sole purpose of helping you decide how much of her testimony to believe. I want to caution you that you may not consider the defendant's prior conviction in any way, except for the limited purpose of helping you decide how much of her testimony to believe and what weight, if any, to give it. You are specifically instructed that you may not consider the defendant's prior conviction as any evidence of her guilt in this case.

INSTRUCTIONS OF LAW

Having told you the general guidelines by which you will evaluate the evidence in this case, I will now instruct you on the law that is applicable to your determinations in this case.

It is your duty as jurors to follow the law as stated to you in these instructions and to apply the rules of law to the facts you find from the evidence. You will not be faithful to your oath as jurors if you find a verdict that is contrary to the law I give to you.

However, it is the sole province of 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.

All the parties in this case have a right to expect you will carefully and impartially consider all the evidence in the case, you will follow the law as I state it to you, and you will reach a just verdict.

I remind you that a separate crime is charged in each count of the indictment. You must consider separately each charge, and the evidence pertaining to each charge. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

Count I

In Count I, the government alleges the defendant possessed with intent to distribute LSD. Specifically, the government alleges that on or about January 28, 1999, defendant possessed with the intent to distribute LSD found in the headliner of her car above a visor. To prove this charge, the government must establish beyond a reasonable doubt each of the following elements:

First, that the defendant possessed LSD;

Second, that the defendant knew that she possessed LSD; and

Third, that the defendant either actually distributed the LSD or intended to distribute it.

If you find that the government has failed to establish beyond a reasonable doubt any one of the three elements you must find defendant not guilty.

The first element the government must prove beyond a reasonable doubt is that the defendant "possessed" LSD. Actual possession is what most of us think of as possession; that is having physical custody or control of an object. However, a person need not have actual physical custody of an object to be in legal possession of it. A person may have "constructive possession" where he or she has the ability to exercise substantial control over an object that he or she does not have in his or her actual physical custody.

The law recognizes 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 that the element of "possession" as that term is used in these instructions is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession, either alone or jointly with others.

Note, however, that possession of LSD cannot be found solely on the ground that the defendant was near or close to the LSD. Nor can it be found simply because a defendant was present at the scene where drugs were involved, or solely because the defendant associated with a person who controls the LSD or the property where it was found. However, you may consider these factors in connection with all other evidence, in making your decision on whether defendant possessed LSD.

The second element which the government must prove beyond a reasonable doubt is that the defendant knew that she possessed LSD and that the possession was not due to carelessness, negligence or mistake. If you find the defendant did not know that she had LSD in her possession, or that the defendant did not know that what she possessed was, in fact, LSD, then you must find the defendant not guilty. Note, however, that the government does not have to prove that the defendant knew the exact nature of the drugs in her possession. It is enough that the government proves that the defendant knew that she possessed some kind of controlled substance.

Finally, the government must prove beyond a reasonable doubt that the defendant intended to distribute the LSD. To satisfy this third element, the government must prove the defendant had control over the LSD with the state of mind or purpose to transfer it to another person. Basically, what you are determining is whether the LSD in the defendant's possession was for her personal use or for the purpose of distribution. Often, it is possible to make this determination from the quantity of drugs found in a defendant's possession. The possession of a large quantity of LSD does not necessarily mean that the defendant intended to distribute it. On the other hand, defendant may have intended to distribute LSD even if she did not possess large amounts of it. Other physical evidence, such as paraphernalia for the packaging or processing of drugs can show such intent. There might also be evidence of a plan to distribute. You should make your decision on whether defendant intended to distribute the LSD in her possession from all the evidence presented.

Count II

Count II charges the defendant with entering a conspiracy with others to distribute LSD. 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 independent offense. It is separate and distinct from the actual violation of any specific federal laws, which may be referred to as "substantive crimes."

Thus, you may find the defendant guilty of the crime of conspiracy to distribute LSD even though the substantive crime which was the object of the conspiracy (i.e., the distribution of LSD) was not actually committed.

To satisfy its burden of proof, the government must establish two essential elements beyond a reasonable doubt:

First, that two or more persons entered an unlawful agreement to distribute LSD; and,

Second, that the defendant knowingly and willfully became a member of the conspiracy.

If you find that the government has failed to establish beyond a reasonable doubt either one of the two elements you must find defendant not guilty.

The first element which the government must prove beyond a reasonable doubt is that two or more persons entered the unlawful agreement charged in the indictment. For the government to satisfy this element, 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.

You must be aware that a conspiracy may not exist involving only the defendant and a government agent. A conspiracy is an agreement between two or more people to commit an unlawful act, and there is no real agreement when one 'conspires' to break the law only with a government agent. The elements of the conspiracy offense are not satisfied unless one conspires with at least one true co-conspirator; i.e., someone who is not a government agent.

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 the persons charged to act together to accomplish an unlawful purpose.

It is important to note that the essence of a conspiracy is the agreement to commit a criminal offense and not the commission of the offense itself. A mere buyer-seller relationship between two individuals, by itself, is not enough to establish a

conspiracy, even when illegal drugs are the commodity being bought and sold.

The second element which the government must prove beyond a reasonable doubt is that the defendant knowingly, willfully, and voluntarily became a member of the conspiracy. In deciding whether the defendant was, in fact, a member of the conspiracy, you should consider whether the defendant knowingly and willfully joined the conspiracy. Did she participate in it with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective as an associate or worker?

In that regard, it has been said that in order for a defendant to be deemed a participant in a conspiracy, he or she must have had a stake in the venture or its outcome. While proof of a financial interest in the outcome of a scheme is not essential, 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 the indictment.

It is important for you to note that the defendant's participation in the conspiracy must be established by independent evidence of her own acts or statements, as well as those of the other alleged co-conspirators, and the reasonable inferences which may be drawn from them.

The defendant's knowledge is a matter of inference from the facts proved. However, to become a member of the conspiracy, the defendant need not have known the identities of each and every other member, nor need she have been appraised of all of their

activities. Moreover, the defendant need not have been fully informed as to all of the details, or the scope, of the conspiracy in order to justify an inference of knowledge on her part. Furthermore, the defendant need not have joined in all of the conspiracy's unlawful objectives.

The extent of a defendant's participation has no bearing on the issue of a defendant's guilt. A conspirator's liability is not measured by the extent or duration of his or her 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 parts in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw the defendant within the ambit of the conspiracy.

I want to caution you, however, that a defendant's mere presence at the scene of the alleged crime does not, by itself, make him or her a member of the conspiracy. Similarly, mere association with one or more members of the conspiracy does not automatically make the defendant a member. A person may know, or be friendly with, a criminal, without being a criminal himself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy.

I also want to caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. Moreover, the fact that the acts of a defendant,

without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make the defendant a member. More is required under the law. What is necessary is that a defendant must have participated with knowledge of at least some of the purposes or objectives of the conspiracy and with the intention of aiding in the accomplishment of those unlawful ends.

Count III

In Count III of the indictment, the defendant is charged with distributing LSD on or about January 28, 1999. In Count III, the government does not allege the defendant necessarily personally distributed LSD; rather, the government alleges an LSD transaction occurred between Travis Dunn and Joe Mailett and that defendant is guilty of distribution because she aided and abetted that transaction.

Under the law, a person who aids or abets others to commit an offense is just as guilty of that offense as if he or she committed it. Accordingly, you may find the defendant guilty of the offense of distribution of LSD if you find beyond a reasonable doubt that the government has proved that other persons actually committed the offense with which the defendant is charged, and that the defendant aided or abetted those persons in the commission of the offense.

The first requirement is that you find that other persons person have committed the crime charged. Obviously, no one can be convicted of aiding or abetting the criminal acts of others if no crime was committed by the other persons 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 the crime.

In order to aid or abet others to commit a crime, it is necessary that the defendant willfully and knowingly associated herself in some way with the crime, and that she willfully and knowingly seeks by some act to help make the crime succeed.

Participation in a crime is willful if action is taken voluntarily and intentionally, or in the case of a failure to act, with the specific intent to fail to do something the law requires to be done; that is to say, with a bad purpose either to disobey or to disregard the law.

The mere presence of a defendant where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or the mere acquiescence by a defendant in the criminal conduct of others, even with guilty knowledge, is not sufficient to establish aiding and abetting. An aider and abettor must have some interest in the crime venture.

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

Did the defendant participate in the crime charged as something she wished to bring about?

Did the defendant associate herself with the criminal venture knowingly and willfully?

Did the defendant seek by her actions to make the criminal venture succeed?

If the defendant did, then she is an aider and abettor, and therefore guilty of the offense.

If, on the other hand, any of your answers to this series of questions is "no," then the defendant is not an aider and abettor, and you must find her not guilty.

Count IV

Count IV of the indictment charges defendant with the substantive offense of distributing a controlled substance. Specifically, the government alleges that defendant distributed LSD to James Jones and Matt Rinaldi while traveling in a car on or about January 28, 1999. In this count, defendant is charged with violating a provision of the Drug Abuse Prevention and Control Act, 21 U.S.C. § 841 (a) (1), which makes it a crime "for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."

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

(1) that the defendant distributed a controlled substance, in this case, LSD; and

(2) that the defendant distributed the controlled substance knowingly or intentionally.

You are instructed as a matter of law that LSD is a schedule I controlled substance. You must ascertain whether or not the material in question was in fact LSD. In doing so 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 dispute the allegation that the material in question was a controlled substance. The nature of a substance such as LSD need not be proven by direct evidence where

circumstantial evidence establishes its identity beyond a reasonable doubt.

Quantity is not an element of the crime of distributing controlled substances. Therefore, it is not necessary for the government to prove a specific amount of the controlled substance that was distributed. It is enough that the government prove beyond a reasonable doubt that a measurable amount of LSD was knowingly and intentionally distributed.

The government must prove beyond a reasonable doubt that the defendant, on or about the dates charged, distributed controlled substances, in this case, LSD, and that she knew the substance she distributed was a controlled substance. The defendant need not have known the exact nature of the drug to violate § 841 (a) (1), it is sufficient that they are aware that the substances they distributed were controlled substances. The term "distribute" means to deliver or to transfer possession or control of something from one person to another. The term "to distribute" includes the sale of something by one person to another.

Finally, the government must establish beyond a reasonable doubt that the defendants distributed the LSD knowingly and intentionally. A person acts knowingly and intentionally if he or she acts voluntarily, and not because of ignorance, mistake, accident, or carelessness. Whether a defendant acted knowingly may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case.

Guilt of Substantive Offenses Through
Participation in a Conspiracy.

There is another method by which you may evaluate the guilt or innocence of the defendant for the substantive charges in Counts I, III, and IV of the indictment even if you do not find that the government has met its burden of proof with respect to these charges.

If, in light of the circumstances, you find, beyond a reasonable doubt, that the defendant was a member of the conspiracy charged in Count II of the indictment, and thus, guilty on the conspiracy count, then you may also, but are not required to, find her guilty of one or more of the substantive crimes charged against her in Counts I, III and IV. In order to find defendant guilty of one of these substantive crimes you must find, beyond a reasonable doubt, each of the following five elements with respect to that particular crime:

First, that the crime charged was committed;

Second, that the person or persons you find actually committed the crime were members of the conspiracy you found existed;

Three, that the substantive crime was committed according to the common plan and understanding you found to exist among the conspirators;

Fourth, that the defendant was a member of that conspiracy at the time the crime was committed; and,

Fifth, that the defendant could have reasonably foreseen that the crime might be committed by her co-conspirator or co-conspirators.

If you find all five of these elements to exist beyond a reasonable doubt as to any of the substantive crimes charged in Counts I, II, or IV, then you may find the defendant guilty of that particular charge even though she did not personally participate in the acts constituting the specific crime or did not have actual knowledge of it.

CONCLUSION

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

You should know that the punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the judge and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

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

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

I appoint _____ as your foreperson.

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

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

A copy this charge will go with you into the jury room for your use.