UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
	:	Case No. 2:14-cr-77
v.	:	
	:	
MICHAEL FORESTE,	:	
	:	
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 to accept these instructions of law and apply them to the facts as you determine them.

This case is a criminal prosecution brought by the United States against the Defendant, Michael Foreste. The Fourth Superseding Indictment charges the Defendant on eleven counts. You will receive a copy of the Indictment to take with you into the jury room.

Count One of the Indictment alleges that Michael Foreste, Dannis Hackney, Andre Clarke and others conspired to distribute oxycodone from around 2008 through on or about June 11, 2014. Counts Four through Eleven allege that Mr. Foreste knowingly and intentionally distributed oxycodone on or about April 5-7 and June 10 and 11, 2014, and on or about the following dates in 2013: September 27 and 28, October 7, 8, 15, 16, 18, 19, 23 and

24, and November 22 and 23. Alternatively, Counts Five and Nine through Eleven charge Mr. Foreste with aiding and abetting in the distribution of oxycodone on or about June 10 and 11, 2014 and on or about October 7 and 8, 15 and 16, and 18 and 19, 2013. Counts Twelve and Thirteen charge the defendant with money laundering. In particular, these counts allege that Mr. Hackney deposited the proceeds of the conspiracy to distribute oxycodone into Mr. Foreste's bank account, and that both Mr. Foreste and Mr. Hackney conducted this transaction with the intent to promote the carrying on of that conspiracy and knowing that the money represented the proceeds of some form of unlawful activity. The Indictment specifically alleges that Mr. Hackney deposited $1,980 on or about January 30, 2014 and $6,000 on or about November 18, 2013.

You should refer to your copy of the Fourth Superseding Indictment to read each charge and to identify the particular dates on which each count was alleged to have occurred.

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. An 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 has pled not guilty to the eleven counts in the Fourth 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 denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice against the defendant or the prosecution.

PRESUMPTION OF INNOCENCE, REASONABLE DOUBT AND BURDEN OF PROOF

The law presumes that the defendant is innocent of the charges against him. The presumption of innocence lasts throughout the trial and during your deliberations. The presumption of innocence ends only if you, the jury, find beyond a reasonable doubt that the defendant is guilty. Should the government fail to prove the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

The question naturally 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 caprice or whim; it is not a speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy. Under your oath as jurors you are not to be swayed by sympathy; you are to be guided solely by the evidence in this case. Reasonable doubt may arise from a lack of evidence.

In a criminal case, the burden is upon the government to prove guilt beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to the 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. For each offense charged in the indictment, if after fair and impartial consideration of all the evidence you have a reasonable doubt, you must find the defendant not guilty of that offense. If you view the evidence in the case as reasonably permitting either of two conclusions–one of innocence, the other of guilt–you must find the defendant not guilty. If, however, after fair and impartial consideration

of all the evidence you are satisfied of the defendant's guilt of that offense beyond a reasonable doubt, you should vote to convict.

FAILURE TO NAME A DEFENDANT

You may not draw any inference, favorable or unfavorable, towards the government or the defendant on trial, from the fact that certain persons were not named as defendants in the Fourth Superseding Indictment. The fact that these persons are not on trial must play no part in your deliberations.

Whether a person should be named as a co-conspirator or indicted as a defendant is a matter within the sole discretion of the United States Attorney and the Grand Jury. Therefore, you may not consider it in any way in reaching your verdict as to the defendant on trial.

EVIDENCE

You have seen and heard the evidence produced in this trial and it is the sole responsibility 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 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 where the fact to be proven is its present existence or condition.

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. Circumstantial evidence is of no less value than 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 Michael Foreste beyond a reasonable doubt, you must find him not guilty.

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 parties, and all the 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 the case. 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 proven, such reasonable inferences as you feel are justified in light of your experiences. 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.

STIPULATION OF 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 proven.

STRICKEN 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.

By the rulings I have made in the course of the trial, I did not intend to indicate to you any of my own views, 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.

CHARTS AND SUMMARIES ADMITTED AS EVIDENCE

The government has presented exhibits in the form of charts and summaries. I decided to admit these charts and summaries in

place of the underlying documents that they represent in order to save time and avoid unnecessary inconvenience. You should consider these charts and summaries as you would any other evidence.

CHARTS AND SUMMARIES NOT ADMITTED AS EVIDENCE

The government has presented exhibits in the form of charts and summaries. These charts and summaries were shown to you in order to make the other evidence more meaningful and to aid you in considering the evidence. They are no better than the testimony or the documents upon which they are based, and are not themselves independent evidence. Therefore, you are to give no greater consideration to these schedules or summaries than you would give to the evidence upon which they are based. It is for you to decide whether the charts, schedules or summaries correctly present the information contained in the testimony and in the exhibits on which they were based. You are entitled to consider the charts, schedules and summaries if you find that they are of assistance to you in analyzing an understanding 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.

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 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.

EXPERT WITNESS

In this case, I have permitted certain witnesses to express their opinions about matters that are in issue. A witness may be permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience and training. Such testimony is presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision based on the facts.

In weighing this opinion testimony, you may consider the witness' qualifications, his or her opinions, the 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 opinion testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. 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.

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.

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 his or her testimony may be colored by a personal or professional interest in the outcome of the case. It is your decision, after reviewing all the evidence, whether to accept the testimony of law enforcement officials, and to give to that testimony whatever weight, if any, you find it deserves.

ACCOMPLICES CALLED BY THE GOVERNMENT

You have heard witnesses who testified that they were actually involved in planning and carrying out the crime charged in the indictment. There has been a great deal said about these so-called accomplice witnesses in the summations of counsel and whether or not you should believe them.

The government argues, as it is permitted to do, that it must take the witnesses as it finds them. It argues that only people who themselves take part in criminal activity have the

knowledge required to show criminal behavior by others. For those very reasons, the law allows the use of accomplice testimony. Indeed, it is the law in federal courts that the testimony of accomplices may be enough in itself for conviction, if the jury finds that the testimony establishes guilt beyond a reasonable doubt.

However, it is also the case that accomplice testimony is of such nature that it must be scrutinized with great care and viewed with particular caution when you decide how much of that testimony to believe.

GOVERNMENT INFORMERS

There has been evidence introduced at trial that the government used an informer in this case. 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 an informer.

On the other hand, where an informer testifies, as occurred here, his or her testimony must be examined with greater scrutiny than the testimony of an ordinary witness. You should

consider whether he or she received any benefits or promises from the government which would motivate the informer to testify falsely against the defendant. For example, the informer may believe that he or she will only continue to receive these benefits if he or she produces evidence of criminal conduct.

If you decide to accept an informer's testimony, after considering it in light of all the evidence in this case, then you may give it whatever weight, if any, it deserves, but you should consider the testimony of the informer with more caution than the testimony of other witnesses.

WITNESS USING DRUGS

There has been evidence introduced at the trial that the government called as witnesses persons who were using or addicted to drugs when the events they observed took place. I instruct you that there is nothing improper about calling such witnesses to testify about events within their personal knowledge.

However, testimony from such witnesses must be examined with greater scrutiny than the testimony of other witnesses. The testimony of a witness who was using drugs at the time of the events he or she is testifying about may be less believable because of the effect the drugs may have on the witness's ability to perceive or relate the events in question.

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

GOVERNMENT WITNESS - NOT PROPER TO CONSIDER GUILTY PLEA

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

CO-OPERATING WITNESS PLEA AGREEMENT

In this case, there has been testimony from government witnesses who pled guilty after entering into agreements with the government to testify. There is evidence that the government has promised to bring the witnesses' cooperation to the attention of the sentencing court.

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

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

PRIOR INCONSISTENT STATEMENTS OF A WITNESS

You have heard evidence that a witness made a statement on an earlier occasion which counsel argues is inconsistent with the witness' trial testimony. Evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence bearing on the defendant's guilt. Evidence of the prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself. If you find that the witness made an earlier statement that conflicts with his trial testimony, you may consider that fact in deciding how much of his trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency, and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so how much, if any, weight to be given to the inconsistent statement in determining whether to believe all or part of the witness' testimony.

RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE

You may not consider any personal feelings you may have about 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.

GOVERNMENT AS A PARTY

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 government, for the enforcement of criminal laws is a matter of prime concern to the community. Equally, this case is important to the defendant, who is charged with a serious crime.

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

You may have observed that the defendant did not testify in this case. The 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 whether or not the government has proved the defendant's guilt beyond a reasonable doubt, you are not to consider, in any manner, the fact that the defendant did not testify. Do not even discuss it in your deliberations.

ADMISSIONS 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.

PUNISHMENT

The punishment provided by law for the offenses charged in the Fourth Superseding Indictment is a matter exclusively within the province of the Court, 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.

USE OF RECORDINGS AND TRANSCRIPTS

The government has offered evidence in the form of audio recordings. This information may have been gathered without the knowledge of the participants. The use of these procedures to gather evidence is perfectly lawful and the government is entitled to use the evidence in this case. You should not consider the method of gathering this evidence in your deliberations.

Along with these recordings, the parties were permitted to display a transcript containing the parties' interpretation of what can be heard on the recordings. The transcripts were provided as aid or guide to assist you, the jury, in listening to the recordings; however, the transcripts themselves are not evidence. The recordings are evidence, and, as such, you must rely on your own interpretation of what you heard on the

recordings. If you think you heard something different than what was represented on the transcript, then what you heard on the recording must control.

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

Having explained the general guidelines by which you will evaluate the evidence, 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.

MULTIPLE COUNTS

The indictment charges Michael Foreste in eleven counts. You must consider each count and any evidence pertaining to it separately and return a separate verdict of guilty or not guilty for each.

"IN OR ABOUT" and "ON OR ABOUT" EXPLAINED

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

COUNT ONE: CONSPIRACY

Count I of the Fourth Superseding Indictment charges that the defendant, Michael Foreste, engaged in a conspiracy with others to distribute oxycodone, a Schedule II controlled substance, in violation of 21 U.S.C. §§846, 841(a)(1) and 841(b)(1)(C). Title 21, United States Code, Section 846, as charged in Count One, makes it a separate federal crime or offense for anyone to conspire or agree with someone else to do something, which, if actually carried out, would be a violation of Section 841(a)(1). Section 841(a)(1) makes it a crime for anyone to knowingly or intentionally distribute a controlled substance. I instruct you that oxycodone is a controlled substance.

Under the law, a "conspiracy" is an agreement or a kind of partnership in criminal purposes in which each member becomes the agent or partner of the other members.

In order to establish the conspiracy offense charged in Count One, it is sufficient to show that the conspirators tacitly came to a mutual understanding to accomplish an unlawful act by means of a joint plan or common design. The indictment alleges the objective of the conspiracy was to distribute oxycodone. If you find beyond a reasonable doubt that the objective of the conspiracy was to distribute this drug, then you may find that the joint plan or common design is proven. Also, because the essence of a conspiracy is the making of the scheme itself, it is not necessary for the government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

In order to find the defendant guilty of Count One, you must find that the government has proven beyond a reasonable doubt the following essential elements of the charge. That at the time and places alleged in the indictment:

(1) two or more persons, in some way or manner, came to a mutual understanding to try to accomplish the common and unlawful plan that is charged in the Fourth Superseding Indictment;

(2) that the defendant knowingly became a member of such conspiracy.

EXISTENCE OF AGREEMENT

The first element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that

two or more person entered the unlawful agreement charged in the indictment.

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

MEMBERSHIP IN THE CONSPIRACY

The second element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy, is that the defendant, Michael Foreste, knowingly became a member of the conspiracy.

If you are satisfied that the conspiracy charged in the indictment existed, you must next ask yourselves who the members of that conspiracy were. In deciding whether the defendant was, in fact, a member of the conspiracy, you should consider whether the defendant knowingly joined the conspiracy. Did he 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 must have had a stake in the venture or its outcome. You are instructed that, while proof of a financial or other 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.

As I mentioned, before the defendant can be found to have been a conspirator, you must first find that he knowingly joined in the unlawful agreement or plan. The key question, therefore, is whether the defendant joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement.

The defendant's knowledge is a matter of inference from the facts proved. In that connection, I instruct you that to become a member of the conspiracy, the defendant need not have known the identities of each and every other member, nor need he have been aware of all of their activities. Moreover, the defendant need not have been fully informed as to all of the details or scope of the conspiracy in order to justify an inference of knowledge on his part. Furthermore, the defendant need not have joined in all of the conspiracy's unlawful acts or objectives or participated in it for the full time period alleged in the indictment.

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 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 a defendant within the ambit of the conspiracy.

A conspiracy may continue for a long period of time and may include the performance of many transactions. It is not necessary that all members of the conspiracy join it at the same time, and one may become a member of a conspiracy without full knowledge of all the details of the unlawful scheme or the names, identities, or locations of all of the other members.

I want to caution you, however, that the defendant's mere presence at the scene of the alleged crime does not, by itself, make him 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. So, if a defendant has an understanding of the unlawful nature of a plan and knowingly joins in that plan on one occasion, that is sufficient to convict him for conspiracy even though he had not participated before and even though he played a minor part.

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 the defendant must have participated with knowledge of at least some of the purposes or objectives of the conspiracy and with the intent of aiding in the accomplishment of those unlawful ends.

In sum, the defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged, advised or assisted in it for the purpose of furthering the illegal undertaking. He thereby becomes a knowing and willing participant in the unlawful agreement –that is to say, a conspirator.

"KNOWINGLY" AND "WILLFULLY" DEFINED

You have been instructed that to sustain its burden of proof on Count One, the government must prove that the defendant acted knowingly or willfully. A person acts knowingly if he acts intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness. You may consider evidence of the defendant's words, acts or omissions, along with all other evidence, in deciding whether the defendant acted knowingly.

Willfully means to act with knowledge that one's conduct is unlawful and with the intent to do something that the law

forbids, that is to say with bad purpose to disobey or to disregard the law. The defendant's conduct was not willful if it was due to negligence, inadvertence or mistake.

BUYER-SELLER TRANSACTION

The Fourth Superseding Indictment charges the defendant was a participant in a criminal conspiracy. Defendant argues, alternatively, that the transactions between him and others constituted a series of buyer-seller transactions, in this case, the buying and selling of drugs. The existence of a simple buyer-seller transaction between a defendant and another person, without more, is not sufficient to establish a conspiracy, even where the buyer might intend to resell the drugs. Moreover, contact with drug traffickers, standing alone, is not sufficient to prove participation in a conspiracy.

In considering whether a conspiracy or a series of simple buyer-seller transactions existed with regard to the defendant, you may consider the following factors, among others:

1) Whether the transaction involved large quantities of drugs
2) Whether the parties had a standardized way of doing business
3) Whether the sales were on credit or consignment
4) Whether the parties had a continuing relationship
5) Whether the seller had a financial stake in a resale by the buyer

6) Whether the parties had an understanding that the drugs would be resold.

7) Whether the individual alleged to have participated in a conspiracy purchased the same drugs from others not involved in the alleged conspiracy.

8) Whether the parties placed limits on the purchaser's ability to use or resell the product.

9) Whether the individual alleged to have participated in the conspiracy did not assist the conspiracy's operation aside from being a customer or purchaser of drugs.

10) Whether the defendant's supplier of drugs also sold to many different buyers.

COUNTS FOUR-ELEVEN: DISTRIBUTION OF A CONTROLLED SUBSTANCE

Counts Four through Eleven of the indictment charge the defendant with knowingly and intentionally distributing oxycodone.

In order to prove the defendant guilty of each of these charges, the government must prove each of the following elements beyond a reasonable doubt:

(1) The defendant knowingly and intentionally distributed a controlled substance; and

(2) At the time of the distribution, the defendant knew that the substance distributed was a controlled substance.

I instruct you that oxycodone is a controlled substance.

DEFINITION OF DISTRIBUTION

The word "distribute" means to deliver a controlled substance. "Deliver" is defined as the actual, constructive or attempted transfer of a controlled substance. Simply stated, the words distribute and deliver mean to pass on, or to hand over to another, or to be caused to be passed on or handed over to another, or to try to pass on or hand over to another, a controlled substance.

Distribution does not require a sale. Activities in furtherance of the ultimate sale, such as vouching for the quality of the drugs, negotiating for or receiving the price, and supplying or delivering the drugs may constitute distribution. In short, distribution requires a concrete involvement in the transfer of the drugs.

"KNOWINGLY" AND "INTENTIONALLY" DEFINED

With respect to counts Four through Eleven, you have been instructed that in order to sustain its burden of proof, the government must prove that the defendant acted knowingly and intentionally. A person acts knowingly if he acts intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness. Whether the defendant acted knowingly may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case.

In order to find that the defendant acted intentionally, you must be satisfied beyond a reasonable doubt that the defendant acted deliberately and purposefully. That is, defendant's acts must have been the product of defendant's conscious objective rather than the product of mistake or accident.

COUNTS FIVE AND NINE THROUGH ELEVEN: AIDING AND ABETTING

Counts Five and Nine through Eleven of the Fourth Superseding Indictment charge the defendant with distribution of oxycodone and with aiding and abetting that offense. The aiding and abetting statute, section 2(a) of Title 18 of the United States Code provides that:

> Whoever commits an offense against the United States or aids or abets or counsels, commands or induces, or procures its commission, is punishable as principal.

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

Accordingly, you may find the defendant guilty of the offense charged if you find beyond a reasonable doubt that another person actually committed the offense with which the

defendant is charged, and that the defendant aided or abetted that person in the commission of the offense.

As you can see, the first requirement is that you find that another person has committed the crime charged. Obviously, no one can be convicted of aiding or abetting the criminal acts of another if no crime was committed by the other person in the first place. But if you do find that a crime was committed, then you must consider whether the defendant aided or abetted the commission of that crime.

In order to aid or abet another to commit a crime, it is necessary that the defendant knowingly associate himself in some way with the crime, and that he participate in the crime by doing some act to help make the crime succeed.

To establish that defendant knowingly associated himself with the crime, the government must establish that the defendant knew that another person knowingly and intentionally distributed oxycodone.

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

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 merely associating with others who

were committing a crime is not sufficient to establish aiding and abetting. One who has no knowledge that a crime is being committed or is about to be committed but inadvertently does something that aids in the commission of that crime is not an aider and abettor. An aider and abettor must know that the crime is being committed and act in a way which is intended to bring about the success of the criminal venture.

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

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

Did he knowingly associate himself with the criminal venture?

Did he seek by his actions to make the criminal venture succeed?

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

UNANIMITY AS TO THEORY OF GUILT- COUNTS FIVE AND NINE THROUGH ELEVEN

You must convict the defendant of Counts Five and Counts Nine through Eleven if you find beyond a reasonable doubt either

(1) that he knowingly and intentionally distributed oxycodone, or (2) that he aided and abetted someone else in the commission of that offense. In other words, the government need not prove that the defendant both knowingly and intentionally distributed oxycodone and that he aided and abetted someone else's commission of that crime. You may convict the defendant of Counts Five and Counts Nine through Eleven if you unanimously find him guilty of doing one or the other as to each Count.

COUNTS TWELVE AND THIRTEEN: MONEY LAUNDERING

Counts Twelve and Thirteen of the indictment charge the defendant with conducting a financial transaction involving the proceeds of specified unlawful activity, sometimes called "money laundering" for short. Section 1956 of Title 18, United States Code, deals with participation in a financial transaction that involves property constituting the proceeds of specified unlawful activity. Specifically, section 1956(a)(1)(A)(i) provides:

> Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity … with intent to promote the carrying on of specified unlawful activity … shall be punished.

In order for you to find the defendant guilty of this charge, the government must prove each of the following elements beyond a reasonable doubt:

(1) The defendant conducted a financial transaction involving property constituting the proceeds of specific unlawful activity, namely the conspiracy to distribute oxycodone.

(2) That the defendant knew that the property involved in the financial transaction was the proceeds of some form of unlawful activity; and

(3) That the defendant acted with the intent to promote the carrying on of specified unlawful activity.

FIRST ELEMENT –FINANCIAL TRANSACTION INVOLVING PROCEEDS OF UNLAWFUL ACTIVITY

The first element which the government must prove beyond a reasonable doubt is that the defendant conducted a financial transaction involving property constituting the proceeds of specified unlawful activity, namely, conspiracy to distribute oxycodone.

The term “conducts” includes initiating, concluding or participating in initiating or concluding a transaction. I instruct you that the defendant’s receipt of funds through bank deposits constitutes participating in the conclusion of a transaction.

A “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition of property.

The term "financial transaction" means a transaction involving a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree, or a transaction which in any way or degree affects interstate or foreign commerce and involves the movement of funds by wire or other means, or involves one or more monetary instruments, or involves the transfer of title to any real property, vehicle, vessel or aircraft.

A "transaction involving a financial institution" which includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase of sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through or to a financial institution by whatever means.

The term "interstate or foreign commerce" means commerce between any combination of states, territories or possessions of the United States, or between the United States and a foreign country.

The term "monetary instrument" includes, among other things, coin or currency of the United States or any other country, personal checks, traveler's checks, cashier's checks, bank checks, money orders, and investment securities or

negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

The term "specified unlawful activity" means any one of a variety of offenses defined by the statute. In this case, the government has alleged that the funds in question were the proceeds of conspiracy to distribute oxycodone. The Fourth Superseding Indictment does not allege that the funds were the proceeds of any particular incidents of distribution of oxycodone alleged in counts four through eleven. I instruct you that, as a matter of law, conspiracy to distribute oxycodone falls within variety of offenses defined by the statute. However, it is for you to determine whether the funds were the proceeds of that unlawful activity.

SECOND ELEMENT –KNOWLEDGE THAT PROPERTY WAS PROCEEDS OF UNLAWFUL ACTIVITY

The second element which the government must prove beyond a reasonable doubt is that the defendant knew that the property involved in the financial transaction was the proceeds of some form of unlawful activity.

To satisfy this element, the government must prove that the defendant knew that the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state, federal, or foreign law. Thus, the government does not have to

prove that the defendant specifically knew that the property involved in the transaction represented the proceeds of conspiracy to distribute oxycodone or any other specific offense. The government only has to prove that the defendant knew it represented the proceeds of some illegal activity which was a felony. I instruct you as a matter of law that conspiracy to distribute oxycodone is a felony under federal law.

THIRD ELEMENT –INTENT TO PROMOTE UNLAWFUL ACTIVITY

The third element which the government must prove beyond a reasonable doubt is that the defendant acted with intent to promote the carrying on of a specified unlawful activity, namely conspiracy to distribute oxycodone.

To act intentionally means to act willfully, not by mistake or accident, with the deliberate purpose of promoting, facilitating or assisting the carrying on of conspiracy to distribute oxycodone. If you find that the defendant acted with the intention or deliberate purpose of promoting, facilitating, or assisting in the carrying on of conspiracy to distribute oxycodone, then the third element is satisfied.

CONCLUSION

I caution you, members of the jury, that you are here to determine whether the government has proven the defendant's guilt beyond a reasonable doubt. I remind you that the mere fact that this defendant has been indicted is not evidence

against him. Also, the defendant is not on trial for any act or conduct or offense not alleged in the Indictment. Nor are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

You should 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 other 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 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 alternate.

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 the counts contained in the Indictment, you will have your foreperson record a verdict of guilty or not guilty. 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 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.

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 the other jurors. Your notes should remain in the jury room and will be collected at

the end of the case.

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

I appoint Jeffrey Coe as your foreperson.

Dated at Burlington, Vermont this 13th day of October, 2016.

_/s/ William K. Sessions III__
William K. Sessions III
U.S. District Court