

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 2:24-cr-10
	)	
TYLER HAYES	)	
	)	

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### **ROLE OF INDICTMENT**

At this time, I would like to remind you of the function of an indictment. An indictment is merely a formal way to accuse a defendant of a crime before trial. An indictment is not evidence. An indictment does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the charges against the defendant. The defendant has pleaded not guilty to the 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 in the superseding indictment and the denial made by the not guilty plea of the defendant.

**ROLE OF THE COURT, THE JURY, AND COUNSEL**

Your first duty is to consider and decide the factual issues of this case. You are the sole and exclusive judges of the facts. By the rulings which I made during the course of the trial, I did not intend to indicate to you or to express my own views about this case. You as jurors weigh the evidence, you determine the credibility or believability of the witnesses, you resolve any conflicts there may be in the evidence, and you draw any reasonable inferences or conclusions that you believe are justified by the facts as you find them. In a moment, I will define the word “evidence” and instruct you on how to assess it, including how to judge whether the witnesses have been honest and should be believed.

Your second duty is to apply the law that I give you to the facts. Do not single out one instruction alone, but consider the instructions as a whole. You should not be concerned with whether you agree with any instruction given by the court. You may have a different opinion as to what the law ought to be, but it would be a violation of your sworn duty as jurors to base your verdict on any version of the law other than what is contained in the instructions given by the court.

The lawyers may have referred to some of the governing rules of law in their argument. However, if you find any differences between the law as stated by the lawyers and the law as stated by me in these instructions, you must follow my instructions. It is the lawyers’ job to point out the things that are most significant or most helpful to their side of the case. But remember that their statements regarding the law are not evidence in this case.

In addition, nothing I say in these instructions should be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts; rather, that job is yours alone. You must perform your duty as jurors with complete fairness and impartiality. All parties expect that you will diligently examine all of the evidence, follow the law as it is now being given to you, and reach a just verdict regardless of the consequences.

**JURORS' EXPERIENCE OR SPECIALIZED KNOWLEDGE**

Anything you have seen or heard outside the courtroom is not evidence, and must be disregarded entirely. It would be a violation of your oath as jurors to consider anything outside the courtroom in your deliberations. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in light of the evidence. However, if any juror has specialized knowledge, expertise, or information with regard to the facts and circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

**SYMPATHY, BIAS, PASSION, OR PREJUDICE**

In arriving at a verdict, you must not permit yourselves to be influenced in the slightest degree by sympathy, bias, passion, or prejudice, or any other emotion in favor of or against either party. The law forbids you from being governed by mere sentiment, conjecture, sympathy, passion, or prejudice. You must not allow any of your personal feelings about the nature of the crime charged to interfere with your deliberations, or to influence the weight given to any of the evidence. You are to perform your duty in an attitude of complete fairness and impartiality.

**RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE**

You may not consider the race, religion, national origin, sex, sexual orientation, gender identity, or age of the defendant or any of the witnesses in your deliberations over the verdict or in the weight given to any evidence.



### **EQUALITY BEFORE THE COURT**

All parties, whether government or individuals, stand as equals before the court. 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.

**REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE**

The government must prove the defendant guilty beyond a reasonable doubt. The question is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not a whim, speculation, or suspicion. However, a reasonable doubt may arise from the evidence, conflicts in the evidence, or a lack of evidence. It is not an excuse to avoid the performance of an unpleasant duty, and it is not sympathy. If you have a reasonable doubt, you must find the defendant not guilty even if you think that the charge is probably true.

In a criminal case, the burden is at all times upon the government to prove guilt beyond a reasonable doubt. The law does not require the government to prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to a defendant, which means that it is always the government's burden to prove each element of the crime 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.

The law presumes the defendant is innocent of the charges against him. The presumption of innocence is a piece of evidence that 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.

If, after a fair and impartial consideration of all the evidence against the defendant, you have a reasonable doubt, then it is your duty to find the defendant not guilty. On the other hand, if, after a fair and impartial consideration of all the evidence, you are satisfied of the defendant's guilt beyond a reasonable doubt, you should vote to convict.

## **EVIDENCE**

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

There are two types of evidence that you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something he or she knows by virtue of his or her own senses-something he or she has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit.

Circumstantial evidence is evidence that tends to prove a disputed fact by proof of other facts. You infer on the basis of reason, experience, and common sense from one established fact the existence or non-existence of some other fact. For example, if you were to see cow tracks in a pasture, that would be circumstantial evidence that there are or were cows in the pasture.

Circumstantial evidence is of no less value than direct evidence. Circumstantial evidence alone may be sufficient evidence of guilt.

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

**EVIDENCE OBTAINED BY SEARCH**

You have heard testimony about evidence seized in connection with certain searches conducted by law enforcement officers. Searches are appropriate law enforcement actions. Whether you approve or disapprove of how the evidence was obtained should not enter into your deliberations.

You must, therefore, regardless of your personal opinions, give this evidence full consideration along with all the other evidence in the case in determining whether the government has proven the defendant's guilt beyond a reasonable doubt. You and you alone, however, decide the weight, if any, to give the evidence.

### **STIPULATIONS OF FACT**

A stipulation is an agreement among the parties that a certain fact is true. You may regard such agreed facts as true, however, I again remind you that you are the sole judges of the facts.

**STRICKEN TESTIMONY, ATTORNEYS' STATEMENTS AND OBJECTIONS,**  
**AND THE COURT'S RULINGS**

I caution you that you should entirely disregard any testimony or exhibit that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. The attorneys have a duty to object to evidence they believe is not admissible. You must not hold it against either side if an attorney made an objection.

### **CREDIBILITY OF WITNESSES**

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

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses or the most evidence. Remember, a defendant in a criminal prosecution has no obligation to present any evidence or call any witnesses.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony.



Two or more persons may hear or see things differently, or may have a different point of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

### **INTEREST IN THE 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 may create a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering has an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it only with great care.

This is not to suggest that any witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

### **EXPERT WITNESSES**

You have heard evidence from witnesses who are known as expert witnesses. An expert witness is a person who has special knowledge, experience, training, or education in his or her profession or area of study. Because of this expertise, an expert witness may offer an opinion about one or more of the issues in the case.

In evaluating an expert witness's testimony, you should evaluate his or her credibility and statements just as you would with any other witness. You should also evaluate whether the expert witness's opinion is supported by the facts that have been proven, and whether the opinion is supported by the witness's knowledge, experience, training, or education. You are not required to give the testimony of an expert witness any greater weight than you believe it deserves just because the witness has been referred to as an expert.

### **LAW ENFORCEMENT WITNESSES**

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

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

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

**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. A defendant's decision not to testify raises no presumption of guilt and does not permit you to draw any unfavorable inference.

Therefore, in determining whether the defendant is guilty or not guilty of the crime charged, you are not to consider, in any manner, the fact that he did not testify. Do not even discuss it in your deliberations.

**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's trial testimony. 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 or herself. If you find that the witness made an earlier statement that conflicts with his or her trial testimony, you may consider that fact in deciding how much of his or her trial testimony, if any, to believe.

It is 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 weight, if any, to give to the inconsistent statement in determining whether to believe all or part of the witness's testimony.

**STATUTORY IMMUNITY OF GOVERNMENT WITNESS**

You have heard the testimony of a witness who has testified under a grant of immunity from this court. What this means is that the testimony of the witness may not be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the immunity order of this court.

You are instructed that the government is entitled to call, as a witness, a person who has been granted immunity by order of this court and that you may convict a defendant on the basis of such a witness's testimony alone, if you find that the testimony proves the defendant guilty beyond a reasonable doubt.

However, the testimony of a witness who has been granted immunity should be examined by you with greater care than the testimony of an ordinary witness. You should scrutinize it closely to determine whether or not it is colored in such a way as to place guilt upon the defendant in order to further the witness's own interests; for, such a witness, confronted with the realization that he can win his own freedom by helping to convict another, has a motive to falsify or exaggerate his testimony.

Such testimony should be scrutinized by you with great care and you should act upon it with caution. If you believe it to be true, and determine to accept the testimony, you may give it such weight, if any, as you believe it deserves.

**OTHER ACTS**

You are only to determine whether the defendant is guilty or not guilty of the crime charged in the superseding indictment. Your determination must be made only from the evidence admitted by the court in this case. The defendant is not on trial for any conduct or offense not charged in the superseding indictment. You should consider evidence about other acts, only as they relate to the charge against the defendant.

The bomb that the Defendant is alleged to have possessed in this case is the alleged destructive device recovered from Overlea Road on February 16, 2023, and not some other alleged destructive device about which you heard evidence in this case.



**“IN OR ABOUT” EXPLAINED**

The superseding indictment charges that the offense was committed “in or about” a certain date. Although 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 the superseding indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

**GOVERNMENT NOT REQUIRED TO UTILIZE PARTICULAR**  
**INVESTIGATIVE METHODS**

The government is not required to pursue any particular investigative method or methods in the investigation or prosecution of a crime. I remind you, however, that the government is always required to prove the defendant's guilt beyond a reasonable doubt.

**IMPERMISSIBLE TO INFER PARTICIPATION FROM ASSOCIATION OR**  
**FROM MERE PRESENCE**

You may not infer that defendant is guilty of participating in criminal conduct merely from the fact that he associated with other people who were guilty of wrongdoing. You also may not infer that a defendant is guilty of participating in criminal conduct merely from the fact that he was present at the time the crime was being committed and had knowledge that it was being committed.

### **USE OF RECORDINGS AND TRANSCRIPTS**

You have heard recordings of statements and conversations. This is proper evidence for you to consider. In order to help you, I have allowed you to view a transcript to read as the recordings were played. The transcript is merely to help you understand what was said on the recordings. If you believe at any point that the transcript says something different from what you hear on the recording, remember it is the recording that is the evidence, not the transcript. Any time there is a variation between the recording and the transcript, you must be guided solely by what you hear on the recording and not what you see in the transcript.

**STATEMENTS BY THE DEFENDANT**

Evidence relating to any alleged statement, act or omission alleged to have been made or done by defendant outside of court and after a crime has been committed should always be considered by the jury with caution and weighed with great care. All such alleged statements, confessions, or admissions should be disregarded entirely unless the other evidence in the case convinces the jury beyond a reasonable doubt that the statement, confession, admission, or act or omission was made or done knowingly and voluntarily.

In determining whether any alleged statement, act or omission alleged to have been made by a defendant outside of court and after a crime has been committed was knowingly and voluntarily made or done the jury should consider the age, training, education, occupation, and physical and mental condition of the defendant, and his treatment while in custody or under interrogation as shown by all of the evidence in the case. Also consider all other circumstances in evidence surrounding the making of the alleged statement.

If after considering the evidence you determine that a statement, act or omission was made or done knowingly and voluntarily, you may give it such weight as you feel it deserves under the circumstances.

**COUNT ONE: KNOWING POSSESSION OF AN UNREGISTERED  
DESTRUCTIVE DEVICE**

Count One of the Superseding Indictment charges the defendant with possession of an unregistered destructive device. The indictment reads:

“Between in or about September 2022 and in or about February 2023, in the District of Vermont, the defendant, Tyler Hayes, knowingly possessed a destructive device, to wit, a bomb, which was not registered to him in the National Firearms Registration and Transfer Record[,]” in violation of Title 26 of the United States Code, sections 5861(d), 5845(a)(8), and 5845(f)(1).

The relevant statute on this subject is called the National Firearms Act, which provides that “[i]t shall be unlawful for any person to receive or possess a firearm that is not registered to him in the National Firearms Registration and Transfer Record.”

Under section 5845(a)(8), the term “firearm” means certain specific items, including a “destructive device.” In this case, the government must prove that the object the defendant possessed was a destructive device. I instruct you that for purposes of this statute, “destructive device” means “any explosive [or] incendiary . . . bomb. . . .”

**Purpose of the Statute**

The National Firearms Act provides for a central registry of certain classes of firearms, including destructive devices. This central registry is called the National Firearms Registration and Transfer Record.

For destructive devices, the information in this registry includes identification of each device (usually by a serial number), the date of its registration, and the name and address of the person who is entitled to possess the device.

#### Essential Elements of the Offense

The government must prove each of the following elements beyond a reasonable doubt in order to convict:

First, that in or about the date range alleged in the indictment, the defendant had possession of the destructive device;

Second, that the defendant “knew of the features of [the device] that brought it within the scope of the Act”; and

Third, that the destructive device was capable of exploding; and

Fourth, that this device was not registered to the defendant in the National Firearms Registration and Transfer Record.

#### Possession of a Destructive Device

The first element that the government must prove beyond a reasonable doubt is that the defendant did, in fact, have possession of the destructive device in question.

As I stated earlier, under section 5845(a)(8), the term “firearm” includes a “destructive device.” In this case, the government must prove that the object the defendant possessed was a destructive device. I instruct you that for purposes of this statute, “destructive device” means “any explosive [or] incendiary . . . bomb. . . . The term ‘destructive device’ shall not include any device which is neither designed nor redesigned for use as a weapon.”

To “possess” means to have something within your control. This does not necessarily mean that you must hold it physically, that is, have actual possession of it. As long as the device is within your control, you possess it. If you find that the defendant had actual possession, or that he had the power and intention to control the device, even though it may have been in the physical possession of another, then you may find that the government has proved possession.

The law recognizes that possession may be sole or joint. If the defendant alone possesses a device, that is sole possession. However, it is possible that more than one person may have the power and intention to exercise control over the device. This is called joint possession. If you find that the defendant had such power and intention, then he possessed the device under this element even if he possessed it jointly with another.

Proof of ownership is not required. Nor is the government required to prove that at the time of the possession the defendant knew that he was breaking the law. It is sufficient to satisfy this element if you find that the defendant possessed the device voluntarily and not by accident or mistake.

#### Knowing Possession

The second element the government must prove beyond a reasonable doubt is that the defendant knowingly possessed the device.

A person is knowingly in possession if his possession occurs voluntarily and intentionally and not because of mistake or accident. The defendant may not be convicted of possession of a device if he did not intend to possess it.



In addition, the government must prove that the defendant knew that the device he possessed had the features that made it subject to regulation as a destructive device.

However, the government does not need to prove that the defendant knew that his possession was unlawful.

The Destructive Device Was Not Registered to the Defendant

The fourth element that the government must prove beyond a reasonable doubt is that the device in question was not registered to the defendant in the National Firearms Registration and Transfer Record.

The evidence in this case contains a stipulation that “[d]uring the time period of September 2022 through February 2023, the defendant, Tyler Hayes, was not registered in the National Firearms Registration and Transfer Record to possess any item.” From such evidence you may, but need not, find that the government has sustained its burden of proving beyond a reasonable doubt the non-registration of the device.

The government does not have to prove that the defendant knew that the law required him to register the device or that that the defendant knew that it was not so registered.

**COUNT TWO: KNOWING POSSESSION OF A DESTRUCTIVE DEVICE**  
**WHILE AN UNLAWFUL USER OF A CONTROLLED SUBSTANCE**

Count Two of the Superseding Indictment charges the defendant with being an unlawful user of a controlled substance and knowingly possessing a destructive device.

The indictment reads:

“Between in or about September 2022 and in or about February 2023, in the District of Vermont, the defendant, Tyler Hayes, knowing that he was an unlawful user of a controlled substance as defined in 21 U.S.C. § 802, knowingly possessed, in and affecting commerce, a firearm, to wit, a destructive device in the form of a bomb[.]” in violation of Title 18 of the United States Code, section 922(g)(3).

The statute provides “It shall be unlawful for any person . . . who is an unlawful user of . . . any controlled substance . . . to . . . possess in or affecting commerce, any firearm[.]”

I instruct you that a “destructive device” meets the definition of a “firearm” as defined in Title 18, United States Code, Section 921. I further instruct you that a “destructive device” is defined as, among other things, “any explosive [or] incendiary . . . bomb.”

**Purpose of the Statute**

Congress was of the view that the ease with which persons were able to acquire firearms, including destructive devices was a significant factor in the prevalence of violent crime in the United States, and that federal restriction of the distribution of firearms, including destructive devices, would be helpful to state and local authorities in

meeting this problem. Accordingly, it passed a series of laws designed to give support to federal, state, and local law enforcement officials in combating crime and violence. In your role as jurors, you are not to be concerned with the wisdom or the policy of those laws. If in fact a violation has occurred, the law should be enforced.

In general, these laws include provisions that prohibit certain categories of people from possessing or receiving firearms, including destructive devices, that were shipped in interstate commerce.

The government contends that the defendant was within the class of people prohibited from possessing firearms, including destructive devices, shipped in interstate commerce because he was an unlawful user of a controlled substance.

#### Essential Elements of the Offense

The government must prove each of the following elements beyond a reasonable doubt in order to convict:

First, that the defendant knowingly possessed the destructive device;

Second, that at the time the defendant possessed the device, he was an unlawful user of controlled substances;

Third, that at the time the defendant possessed the device, he knew that he was an unlawful user of controlled substances; and

Fourth, that the possession charged was in or affecting interstate or foreign commerce.

Knowing Possession of a Destructive Device

The first element that the government must prove beyond a reasonable doubt is that in or about the date range set forth in the indictment, the defendant knowingly possessed a destructive device.

As I instructed you earlier, the term “firearm” includes any destructive device. The term “destructive device” means “any explosive [or] incendiary . . . bomb.” The term “destructive device” does not include any device which is neither designed nor redesigned for use as a weapon.

To “possess” means to have something within a person’s control. This does not necessarily mean that the defendant must hold it physically, that is, have actual possession of it. As long as the device is within the defendant’s control, he possesses it. If you find that the defendant either had actual possession of the device, or that he had the power and intention to exercise control over it, even though it was not in his physical possession, you may find that the government has proven possession.

The law also recognizes that possession may be sole or joint. If one person alone possesses it, that is sole possession. However, it is possible that more than one person may have the power and intention to exercise control over the device. This is called joint possession. If you find that the defendant had such power and intention, then he possessed the device under this element even if he possessed it jointly with another. Proof of ownership of the device is not required.

To satisfy this element, you must also find that the defendant knowingly possessed the device. This means that he possessed the device purposely and voluntarily, and not by

accident or mistake. It also means that he knew that the weapon was a destructive device. However, the government is not required to prove that the defendant knew that he was breaking the law.

#### Unlawful User of a Controlled Substance

The second element the government must prove beyond a reasonable doubt is that at the time of the alleged offense, the defendant was an unlawful user of a controlled substance.

You are instructed that fentanyl, heroin, cocaine, and methamphetamine are controlled substances.

An unlawful user of controlled substances is a person who regularly and repeatedly uses controlled substances and has lost the power of self-control with reference to the use of those controlled substances, or a person who, at the time of the charged conduct, was a current user of controlled substances in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before the events charged in the indictment, but rather that the unlawful use occurred close in time enough to the charged conduct to indicate that the individual was actively engaged in such conduct. Using controlled substances one time or only infrequently, however, is not sufficient to establish that the defendant was an unlawful user as I just defined that term.

A person may be an unlawful user of a controlled substance even though the substance was not being used at the precise time that the individual possessed the firearm, or in this case, destructive device.

You may conclude that the defendant was an unlawful user of controlled substances if you find that the defendant engaged in a pattern of use of controlled substances that reasonably covers the time of the events charged in the indictment.

By itself, the fact that the defendant was a user of controlled substances is not enough to convict him of any crime unless the government also proves that he was a user of controlled substances during the time he possessed the destructive device.

You may not assume that the Defendant's drug use makes it more likely, in the general sense, or as a matter of his character, that he committed a crime. That said, in order to convict the Defendant on Count Two, you must be persuaded beyond a reasonable doubt that, at the time he possessed the destructive device, he was an unlawful user of controlled substances.

Defendant's Knowledge of Being an Unlawful User of a Controlled Substance

The third element the government must prove beyond a reasonable doubt is that, at the time the defendant possessed the device, he knew that he was an unlawful user of a controlled substance.

The government, however, is not required to prove that the defendant knew that he was prohibited from possessing a destructive device. It is enough if the government establishes beyond a reasonable doubt that the defendant knew he was an unlawful user of controlled substances.

Destructive Device In or Affecting Interstate Commerce

The fourth element that the government must prove beyond a reasonable doubt is that the destructive device the defendant is charged with possessing was in or affecting interstate commerce.

This means that the government must prove that at some time prior to the defendant's possession, a component of the device had traveled in interstate commerce. It is sufficient for the government to satisfy this element by proving that at any time prior to the date charged in the indictment, a component of the device crossed a state line. It is not necessary that the government prove that the defendant himself carried it across a state line, nor must the government prove who carried it across or how it was transported. It is also not necessary for the government to prove that the defendant knew that the destructive device had previously traveled in interstate commerce.

The evidence in this case contains stipulations that the "explosive powder" within the device was "Pyrodex, a product sold by Hodgdon Powder Company," and that "Hodgdon Powder Company is based in the state of Kansas and does not manufacture, and has not manufactured, its Pyrodex product in the state of Vermont. Thus, Pyrodex powder present in the state of Vermont has traveled in interstate commerce." You are permitted to infer from these facts that the destructive device traveled in interstate commerce; however, you are not required to do so.

**UNANIMOUS VERDICT REQUIRED**

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



### **JUROR NOTE-TAKING**

During this trial, you have been provided with pen and paper, and some of you have taken notes. As I explained at the beginning of the trial, all jurors should be given equal attention during the deliberations regardless of whether they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. You may not use your notes as authority to persuade your fellow jurors as to what a witness did or did not say. In your deliberations you must rely upon your collective memory of the evidence in deciding the facts of the case. If there is any difference between your memory of the evidence and your notes, you may ask that the record of the proceedings be read back. If a difference still exists, the record must prevail over your notes.

### **RECOLLECTION OF EVIDENCE**

Let me remind you that in deliberating upon your verdict, you are to rely solely and entirely upon your own memory of the testimony. If, during your deliberations, you are unable to recall with any degree of accuracy a particular part of the testimony, or a part of these instructions, you may do the following:

1. Write out your question, and have the foreperson sign it;
2. Knock on the door of the jury room; and
3. Deliver your note to the Court Officer to give to me.

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

### **CONCLUSION**

I caution you, members of the jury, that you are here to determine whether the defendant before you today is not guilty or guilty solely from the evidence in this case. I remind you that the mere fact that a defendant has been indicted is not evidence against him. Also, a defendant is not on trial for any act or conduct or offense not alleged in the superseding indictment. Nor are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

You should not consider the consequences of a guilty or not guilty determination. The punishment provided by law for the offense charged in the indictment is a matter exclusively within the responsibility of the judge and should never be considered by the jury in any way in arriving at an impartial verdict.

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

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. If a vote is to be taken, your foreperson will ensure that it is done. A verdict form has been prepared for your conclusions. This is the written form for you to fill out that indicates that, if you did not unanimously find that the defendant possessed a destructive device in the form of a

bomb, you may proceed to enter verdicts of “not guilty” on Count One and Count Two. If you unanimously find that defendant did possess a destructive device, you must proceed to assess all other elements of Count One and Count Two. If the verdict form varies in any way from the instructions provided within this jury charge, I instruct you that you are to follow the instructions provided within this jury charge.

After you have reached an agreement, the foreperson will record your verdicts. Your foreperson will then sign and date the verdict form and you will return to the courtroom. In all other respects, a foreperson is the same as any other juror. His or her vote does not count more than any other member of the jury.

If, during your deliberations, you should desire to communicate with the court, please put your message or question in writing signed by the foreperson, and pass the note to the Court Officer, who will bring it to my attention. I will then confer with the attorneys and I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can speak with you. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time. You should also never communicate the subject matter of your note or your deliberations to any member of the court’s staff.