FINAL

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. ~~2:23-cr-119-1, 2~~ 2:23-cr-60-1
	)	
ROCKYLANE LEWIS (a/k/a	)	
"Rizzo," "Rocko," and "Rockout,"),	)	
and TAKAR WATSON (a/k/a "Fast"	)	
and "Fastlife"),	)	

Defendants.

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.

I have previously read the charge or, as it is also called, the indictment to you. You will receive copies of the Second Superseding Indictment with the exhibits in the jury room. I would like to remind you of the function of an indictment. An indictment is a formal way to accuse a defendant of a crime prior to trial. In this case, the second superseding indictment describes the charges against Mr. Lewis. Mr. Lewis is not on trial for any act or any conduct not specifically charged in the second superseding indictment.

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 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.

By reading the indictment I did not mean to convey any view or opinion about whether the charges it contains have been proved to be true.

As you observed during the trial, the defendant Takar Watson who was present at jury selection is no longer a party in this case. The charges against Mr. Watson have been resolved and you need not consider the question of his guilt or innocence during your deliberations. Similarly, Counts 2, 3 and 4 concerning Mr. Lewis have also been resolved and you need not consider those charges.

I will now instruct you concerning issues of law which apply generally to the trial of this case.

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE

The law presumes that the defendant Rockylane Lewis 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 on one or more of the charges. Should the government fail to prove the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

The government must prove the defendant guilty beyond a reasonable doubt. The question is: what is a reasonable doubt? It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has in his or her mind 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 making an important decision in his or her own affairs. A reasonable doubt is not a whim, speculation, or suspicion. A reasonable doubt may arise from a lack of evidence. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy.

In a criminal case, the burden is at all times 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 of the elements of the crimes charged beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

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

JURORS' EXPERIENCE/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.

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 and any exhibits that have been admitted into evidence. 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 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 such as a document or photograph.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You may 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 heard the sound of snowplows in the night, you might infer that it had started to snow. There could be another explanation, of course, but snowfall would be a reasonable inference.

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

The evidence also includes the stipulations agreed to by the parties. You have heard me read these aloud in court. You will receive copies of the stipulations as part of the evidence in the case.

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. Remember that there are nine separate charges or counts in this case. After weighing all the evidence relevant to a particular charge, if you are not convinced of the defendant's guilt beyond a reasonable doubt on that charge, you must find him not guilty of that offense. You must consider each charge separately. I will supply you with a verdict form listing each charge and providing a space for your verdict on each charge.

EXPERT WITNESSES

I have permitted certain witnesses to express their professional 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 on the facts.

In weighing this opinion testimony, you may consider the witness's 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's testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of 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.

PARTIES' STATEMENTS/COURT'S RULINGS

I caution you that you should not consider or base your decision upon any testimony or exhibit that has been excluded or stricken from the record. Likewise, the arguments of the parties and the questions they asked are not evidence in the case. Facts contained in questions to which the witness has assented are evidence if you credit the witness's affirmative answer. By the rulings the court made in the course of the trial, I did not intend to indicate to you any of my own preferences, or to influence you in any manner regarding how you should decide the case. The parties have a duty to object to evidence they believe is not admissible. You must not hold it against either side if one side made an objection.

ARGUMENTS OF THE PARTIES

In addition to objections in the course of the trial, the parties have also provided you with opening statements and closing arguments. These statements are very important because they represent the effort of both sides to organize and describe the evidence for you and to advocate for their respective positions. I ask that you consider their statements and arguments carefully. But these statements and arguments are not evidence in the case. The evidence is limited to testimony from witnesses and exhibits which the judge has admitted into evidence.

CREDIBILITY OF WITNESSES

As jurors, you 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.

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 deserving of more or less consideration or greater or lesser weight than that of an ordinary witness. It is your decision, after reviewing all the evidence, whether to accept the testimony of a law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

USE OF INFORMANTS

You have heard testimony from informants employed by the government to investigate the defendant. Sometimes the government uses informants who may conceal their true identities in order to investigate suspected violations of the law. There is nothing improper or illegal with the government using these techniques. Indeed, certain types of evidence would be extremely difficult to detect without the use of informants. Whether or not you approve of the use of an informant to detect unlawful activities is not to enter into your deliberations in any way.

TESTIMONY OF WITNESSES WHO HAVE RECEIVED IMMUNITY OR OTHER BENEFITS FROM THE PROSECUTION

You have heard testimony from witnesses who have received immunity or who have received some other benefit by testifying in this case or cooperating in some other way with the prosecution. In evaluating the testimony of such a witness, you may consider the extent to which or whether their testimony may have been influenced by any of these factors. You may consider whether their testimony was influenced by a desire for consideration at sentencing or in some other way. Additionally, you have heard from witnesses alleged to be accomplices to the crimes charged. An accomplice is one who voluntarily and intentionally joins with another in committing a crime. Some individuals who may be accomplices have pleaded guilty to crimes arising out of the same events for which the defendant is on trial. Their guilty pleas are not evidence against the defendant, and you may consider them only in weighing that particular witness's credibility.

SEARCH WARRANTS

You have heard testimony in this case regarding evidence seized by the government during the execution of search warrants. It is the responsibility of the court to determine the validity and legality of those search warrants and other searches. These are not issues for your consideration. It is up to you to decide what significance, if any, the evidence seized may have in this case.

BIAS, PREJUDICE, AND EQUALITY BEFORE THE COURT

You are to perform the duty of finding the facts without bias or prejudice toward any party. You are to perform this duty in an attitude of complete fairness and impartiality. You must not allow any of your personal feelings about the nature of the crimes charged to interfere with your deliberations, or influence the weight given to any of the evidence.

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

This case is important to the parties and the court. You must give it the fair and serious consideration which it deserves.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a case. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals before the court.

The question of possible punishment of the defendant in the event of a conviction is not the jury's concern and should not influence your deliberations. Your function is to weigh the evidence in the case and to determine whether the defendant is guilty beyond a reasonable doubt, solely upon the basis of such evidence. If the defendant is convicted, the court will consider the issue of punishment in a separate phase of the case.

SEPARATE CONSIDERATION OF MULTIPLE COUNTS

The defendant Rockylane Lewis is charged with multiple offenses; each offense is charged in a separate count of the indictment. The number of offenses charged is not evidence of guilt, and this should not influence your decision in any way. You must consider the evidence against the defendant on each offense charged separately. For each offense, you must decide whether the government has proved beyond a reasonable doubt that the defendant is guilty of the particular offense.

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

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

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.

THE ESSENTIAL ELEMENTS OF THE 9 CHARGES

Mr. Lewis is charged with 9 counts of violation of federal law. I will discuss the elements of each count.

Count One charges Mr. Lewis with conspiring to distribute fentanyl, oxycodone, and cocaine base, each Schedule II controlled substances under federal law. Count One includes an additional element alleged against Mr. Lewis. This element is that his conduct as a member of the conspiracy, including the reasonably foreseeable conduct of other members of the conspiracy, involved over 280 grams of a mixture of substance containing a detectable amount of cocaine base.

Count Five charges Mr. Lewis with conspiracy to employ, hire, use, persuade, induce, entice, and coerce persons under 18 years of age to distribute fentanyl and cocaine base.

Counts Six – Nine charge Mr. Lewis with employing, hiring, using, persuading, inducing, enticing and coercing a person under 18 years of age to distribute fentanyl or cocaine base.

Count Ten charges Mr. Lewis with conspiracy to use or possess firearms in furtherance of a federal drug trafficking crime, specifically the crime alleged in Count One of conspiracy to distribute controlled substances.

Count 11 charges Mr. Lewis with possession of firearms in furtherance of federal drug trafficking crimes.

Count 12 charges Mr. Lewis with possession of a firearm while he was a fugitive from justice.

I will now discuss the legal elements of each of these charges in greater detail.

THE ESSENTIAL ELEMENTS OF THE CHARGE: COUNT ONE

Count One charges Mr. Lewis with conspiracy to distribute controlled substances. To sustain its burden of proof on the conspiracy charge, the Government must prove the following elements beyond a reasonable doubt:

1. The defendant knowingly and willfully entered into a conspiracy. A conspiracy is an agreement or an understanding of two or more persons to accomplish by concerted action one or more unlawful objectives.
2. The objective of the conspiracy was the distribution of controlled substances, specifically fentanyl, oxycodone, and cocaine base.
3. The distribution of these controlled substances is itself a criminal offense the elements of which are:

a. The knowing or intentional

b. Distribution of fentanyl, oxycodone, and cocaine base to other people;

c. At a time when these substances appear on the list of controlled substances under federal law.

4. The second superseding indictment also alleges an additional element which is that the defendant's conduct, including the reasonably foreseeable conduct of other members of the conspiracy, involved over 280 grams or more of cocaine base.

I will take a moment to define these elements in more detail.

EXISTENCE OF AGREEMENT

The first element that the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that two or more persons entered the unlawful agreement charged in the second superseding 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 the act of distribution of fentanyl, oxycodone and cocaine base.

You may find that the existence of an agreement to distribute fentanyl, oxycodone, and cocaine base 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 government must also prove beyond a reasonable doubt that the defendant knowingly, willfully and voluntarily became a member of the conspiracy.

If you are satisfied that the conspiracy charged in the second superseding indictment existed, you must next ask yourselves who the members of that conspiracy were. In deciding whether the defendant whom you are considering was, in fact, a member of the conspiracy, you should consider whether the defendant knowingly and willfully 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 interest in the outcome of a scheme is not essential, if you find that the defendant had such an interest, that finding is a factor that you may properly consider in determining whether or not the defendant was a member of the conspiracy charged in the indictment.

As I mentioned a moment ago, 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.

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

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

The extent of a defendant's participation has no bearing on the issue of a defendant's guilt. A conspirator's liability is not measured by the extent or duration of his participation. Indeed, each member may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw the defendant within the ambit of the conspiracy.

I want to caution you, however, that 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 membership in the conspiracy.

I also want to caution you that mere knowledge or acquiescence without participation, in the unlawful plan is not sufficient. Moreover, the fact that the acts of a defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make the defendant a member. More is required under the law. What is necessary is that the defendant must have participated with knowledge of at least some of the purposes or objectives of the conspiracy and with the intention of aiding in the accomplishment of those unlawful ends.

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 comes a knowing and willing participant in the unlawful agreement – that is to say, a conspirator.

OBJECTIVE OF THE CONSPIRACY

The government must also prove that the defendant had knowledge of the objective of the conspiracy.

The Second Superseding Indictment alleges that the objective of the conspiracy was the distribution of controlled substances under federal law, specifically fentanyl, oxycodone and cocaine base. The elements of this offense are as follows:

1. The knowing and intentional

2. Distribution of fentanyl, oxycodone and cocaine base to others;

3. I instruct you that fentanyl, oxycodone and cocaine base are Schedule II controlled substances under federal law.

"DISTRIBUTION" DEFINED

The term "distribute," in this context, and as used in these instructions, means to deliver a controlled substance, in this case, fentanyl, oxycodone, and cocaine base. "Deliver" means 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 cause 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 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.

KNOWLEDGE OF THE CONSPIRACY'S OBJECTIVE

The prosecution must prove that the defendant knew that the objective of the conspiracy was to distribute controlled substances and, in particular, the controlled substances fentanyl, oxycodone and cocaine base.

Your decision whether the defendant knew that the objective of the conspiracy was to distribute controlled substances involves a decision about his state of mind. It is obviously impossible to prove directly the operation of a person's mind. But a wise and intelligent consideration of all the facts and circumstances shown by the evidence and the exhibits in this case may enable you to infer what that state of mind was. In our everyday affairs, we are continuously called upon to decide from the actions of others what their state of mind is. Experience has taught us that, frequently, actions speak louder and more clearly than spoken or written words. Therefore, you may rely on circumstantial evidence in determining state of mind.

"KNOWINGLY' AND "INTENTIONALLY" EXPLAINED

A person acts knowingly and intentionally if he acts voluntarily, and not because of ignorance, mistake, accident, or carelessness. Whether a defendant acted knowingly and intentionally may be proven by his conduct and by all of the facts and circumstances surrounding the case.

FINDING AS TO QUANTITY OF COCAINE BASE

If you find that the government has proved beyond a reasonable doubt the elements of conspiracy to distribute a controlled substance for Mr. Lewis, then there is another issue that you must decide with regard to Count One: if cocaine base was involved, the quantity of cocaine base for which the defendant is responsible. The government bears the burden of proof beyond a reasonable doubt on this issue. The verdict form asks whether the government has proved beyond a reasonable doubt that the conspiracy involved 280 grams or more of a mixture of substance containing a detectible amount of cocaine base.

In proving the amount of cocaine base involved in the conspiracy with regard to defendant Lewis, the government does not have to prove that the defendant directly handled or distributed the quantity alleged although you may consider that evidence along with other evidence to reach a decision on the quantity element. In deciding whether the government has proved that the conspiracy involved a particular quantity of cocaine base, you may consider quantities that the defendant was personally involved in as well as quantities that resulted from the reasonably foreseeable conduct of other members of the conspiracy at the time the defendant was a member of the conspiracy.

You should address the issue of the quantity of cocaine base involved in the conspiracy only if you find the essential elements of the conspiracy alleged in Count One have been proved beyond a reasonable doubt as to defendant Lewis. If you decide that the government has not proved beyond a reasonable doubt that the charged conspiracy involved 280 grams or more of cocaine base, then you must find defendant Lewis not guilty of the charged amount even if you determine that he was otherwise involved in a lesser quantity of cocaine base.

ACTS AND DECLARATIONS OF CO-CONSPIRATORS

Evidence has been admitted in this case about acts or statements of persons the Government alleges to be co-conspirators of Rockylane Lewis. The acts or statements of any member of a conspiracy are treated as the acts or statements of all the members of the conspiracy if these acts or statements were performed or spoken during the existence of the conspiracy and to further the objectives of the conspiracy. Therefore, you may consider as evidence against Rockylane Lewis any acts done or statements made by any members of the conspiracy, during the existence of the conspiracy and to further the objectives of the conspiracy. You may consider these acts or statements even if they were done and made in the defendant's absence and without the knowledge of the defendant. As is the case with all the evidence presented in the case, it is for you to decide whether you believe this evidence and how much weight to give it.

THE ESSENTIAL ELEMENTS OF THE CHARGE: COUNT FIVE

Count Five charges Mr. Lewis with conspiracy to employ, hire, use, persuade, induce, entice and coerce, persons under eighteen years of age to distribute fentanyl and cocaine base, both Schedule II controlled substances.

To sustain its burden of proof, the government must prove the following elements:

1. The defendant entered into a conspiracy to commit the offense of employing or otherwise using a person under eighteen years of age to distribute fentanyl and cocaine base.
2. The defendant acted knowingly and willfully.

The definition of "conspiracy" and the elements of that offense are the same as those for Count One with one exception. For Count Five, the alleged objective of the conspiracy was the employment of persons under eighteen to distribute fentanyl and cocaine base. The elements of this offense are:

1. The defendant knowingly and intentionally hired, used, persuaded, coerced, induced, enticed, or employed the minor identified to distribute the controlled substances identified;
2. The defendant knew that the substance he was employing the minor to distribute was a controlled substance;
3. The defendant was at least eighteen years of age; and
4. The minor identified was under the age of eighteen years.

The Government is not required to prove that the defendant knew the age of the minor. The definition of distribute and "knowingly and intentionally" are the same as that provided for Count One. I instruct you that fentanyl, oxycodone, and cocaine base are all controlled substances under federal law.

<u>THE ESSENTIAL ELEMENTS OF COUNT SIX – NINE</u>

Counts Six through Nine of the Second Superseding Indictment charge the defendant, Mr. Lewis, with knowingly and intentionally employing persons under the age of 18 to distribute controlled substances. Specifically, Count Six charges Mr. Lewis with employing K.C. to distribute fentanyl, Count Seven charges Mr. Lewis with employing K.C. to distribute cocaine base, Count Eight charges Mr. Lewis with employing K.C. to distribute fentanyl and cocaine base, and Count Nine charges Mr. Lewis with employing D.A. to distribute fentanyl, all Schedule II controlled substances.

For the defendant to be found guilty of each of these charges, the government must prove each of the following elements beyond a reasonable doubt;

1. The defendant knowing and intentionally hired, used, persuaded, coerced, induced, enticed, or employed the minor identified to distribute the controlled substances identified;
2. The defendant knew that the substance he was employing the minor to distribute was a controlled substance;
3. The defendant was at least eighteen years of age; and
4. The minor identified was under the age of eighteen years.

The government is not required to prove that the defendant knew the age of the minor.

The definition of "distribution" is the same as for Count One. The requirement of proof that the drugs were controlled substances is also the same as for Count One. The definition of "knowingly and intentionally" is the same as for Count One. The requirement of proof that the defendant knew that the drugs were controlled substances is the same as for Count One.

THE ESSENTIAL ELEMENTS OF COUNT TEN

To sustain its burden of proof on Count Ten, the Government must prove the following elements beyond a reasonable doubt:

1. Defendants Lewis and others knowingly and willfully entered into a conspiracy. A conspiracy is an agreement or an understanding of two or more persons to accomplish by concerted action one or more unlawful objectives.
2. The objective of the conspiracy was:
    a. To use firearms during and in relation to the drug trafficking conspiracy charged in Count One; or
    b. To possess firearms in furtherance of the drug trafficking conspiracy charged in Count One.

The definition of "conspiracy" and the elements of that offense are the same as those for Count One with one exception. For Count Ten, the alleged objective of the conspiracy was the use of firearms during and in relation to, or the possession of firearms in furtherance of, the drug trafficking conspiracy charged in Count One.

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

DEFINITION OF "USE"

The government must prove beyond a reasonable doubt that the defendant agreed with another person to actively employ a firearm during and in relation to the commission of a drug trafficking crime. Use of a firearm is the active employment of a firearm during and in relation to the commission of the drug trafficking crime. This does not mean that the firearm must actually have been fired, although that would obviously constitute use of the weapon. Brandishing, displaying, or even referring to the weapon so that others present knew that the firearm was available if needed all constitute use of the firearm. However, the mere possession of a firearm at or near the site of the crime without active employment as I just described is not sufficient to constitute a use of the firearm.

POSSESSION IN FURTHERANCE OF A DRUG TRAFFICKING CRIME

The government must prove beyond a reasonable doubt that the defendant agreed with another person to possess a firearm in furtherance of a drug trafficking crime. Possession means that a conspirator either had physical possession of the firearm on his person or that he had dominion and control over the place where the firearm was located and had the power and intention to exercise control over the firearm.

Possession "in furtherance of" means for the purpose of assisting in, promoting, accomplishing, advancing, or achieving the goal or objective of the conspiracy to distribute controlled substances as alleged in Count One. Mere presence of a firearm at the scene is not enough to prove possession in furtherance of a drug trafficking crime. The firearm's presence may be coincidental or entirely unrelated to the underlying crime. Some factors that may help you determine whether possession of a firearm furthers a drug trafficking crime include, but are not limited to:

1. The type of criminal activity that is being conducted;
2. Accessibility of the firearm;
3. The type of firearm;
4. Whether the firearm was loaded;
5. The time and circumstances under which the firearm is found; and
6. The proximity of the firearm to drugs or drug profits.

UNANIMITY OF THEORY

Count Ten of the Second Superseding Indictment alleges the defendant conspired to commit the crime charged in two ways. The first is that each defendant agreed with at least one other person that firearms would be used during and in relation to the drug trafficking crime charged in Count One. The second is that the defendant agreed with at least one other person that firearms would be possessed in furtherance of the drug trafficking crime charged in Count One.

The government does not have to prove both of these for you to return a guilty verdict on Count Ten. Proof beyond a reasonable doubt on one theory or another is enough. But in order to return a guilty verdict, all of you must agree that the same theory has been proved. Thus, in order to convict the defendant on Count Ten, all of you must agree beyond a reasonable doubt that the defendant agreed with at least one other person that the firearms would be used during and in relation to the drug trafficking crime charge in Count One; or you must agree beyond a reasonable doubt that the defendant agreed with at least one other person that firearms would be possessed in furtherance of the drug trafficking crime charged in Count One.

THE ESSENTIAL ELEMENTS OF COUNT 11

Count Eleven of the Second Superseding Indictment charges Mr. Lewis with knowingly possessing firearms in furtherance of the drug trafficking crimes charged in Counts One and Five. To sustain its burden of proof on this charge, the government must prove the following elements beyond a reasonable doubt:

1. The defendant committed a drug trafficking crime for which he might be prosecuted in a court of the United States.

2. The defendant knowingly possessed a firearm in furtherance of that drug trafficking crime.

The first element the government must prove beyond a reasonable doubt is that the defendant committed a drug trafficking crime for which he might be prosecuted in a court of the United States. The defendant is charged in Count One with committing the crime of conspiracy to distribute fentanyl, oxycodone, and cocaine base. The defendant is charged in Count Five with conspiracy to employ minors to distribute fentanyl and cocaine base. I instruct you that Counts One and Five are drug trafficking crimes.

However, it is for you to determine whether the government has proven beyond a reasonable doubt that the defendant committed the crimes as charged in Counts One and Five. If upon review of all the evidence you find that the government has proved Count One, Count Five, or both beyond a reasonable doubt, you will proceed to determine whether the government has proved beyond a reasonable doubt the second element of the crime charged in Count Eleven. If, instead, you find that the government has failed to prove either Count One or Count Five beyond a reasonable doubt, you will proceed no further on Count Eleven and will find the defendant not guilty.

The second element the government must prove beyond a reasonable doubt is that the defendant knowingly possessed a firearm in further of the commission of the crime charged in Count One or the crime charged in Count Five.

DEFINITION OF "FIREARM"

A 'firearm' is any weapon that will or is designed to or may be readily converted to expel a projectile by the action of an explosive. This is the same definition I provided for Count Ten.

POSSESSION IN FURTHERANCE OF A DRUG TRAFFICKING CRIME

The definition of possession of a firearm in furtherance of a drug trafficking crime is the same as the definition I provided for Count Ten except that the drug trafficking crimes alleged are the crimes charged in Count One (conspiracy to distribute controlled substances) and Count Five (conspiracy to employ a person younger than 18 to distribute controlled substances).

The government must also prove that the defendant possessed the firearm knowingly. This means that he possessed the firearm purposely and voluntarily, and not by accident or mistake. It also means that he knew that the weapon was a firearm. However, the government is not required to prove that the defendant knew that he was breaking the law.

UNANIMITY OF THEORY

Count Eleven alleges that Mr. Lewis committed the crime of possessing firearms in furtherance of a drug trafficking crime in three ways – in furtherance of the crime charged in Count One, the crime charged in Count Five, or both.

The government does not have to prove that the defendant possessed the firearm in furtherance of both Counts One and Five. Proof beyond a reasonable doubt that he possessed the firearm in furtherance of either is sufficient. But in order to return a guilty verdict, all of you must agree that the same one has been proved. Thus, all of you must agree beyond a reasonable doubt that the defendant knowingly possessed a firearm in furtherance of the drug trafficking crime charged in Count One, in furtherance of the drug trafficking crime charged in Count Five, or in furtherance of both.

THE ESSENTIAL ELEMENTS OF THE CHARGE: COUNT TWELVE

To sustain its burden of proof on Count 12, the Government must prove the following elements beyond a reasonable doubt:

1. Defendant Lewis was a fugitive from justice;
2. While he was a fugitive, he knowingly possessed a firearm;

3. The possession of that firearm was "in and affecting interstate commerce."

A fugitive from justice is a person who has fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

I instruct you that any prosecution or proceeding you may find the defendant fled from is to be considered only as evidence of whether the defendant was eligible to possess firearms. Such prosecution or proceeding is not to be given any weight or consideration in determining beyond a reasonable doubt whether the defendant knowingly possessed the firearm.

<u>KNOWLEDGE OF STATUS AS "FUGITIVE FROM JUSTICE"</u>

The government must prove beyond a reasonable doubt that at the time he possessed the firearm, the defendant knew that he was a fugitive from justice. This means the government must prove that the defendant knew that he had fled from any state to avoid a prosecution or testifying in a criminal proceeding. The government need not prove that the defendant knew the term "fugitive from justice." Nor need the government prove that the defendant knew it was unlawful for him to possess a firearm.

You may use the same definition of the terms "firearm" and "possession of a firearm" that I provided in the instructions for Count Ten.

<u>DEFINITION OF "IN AND AFFECTING COMMERCE"</u>

The government must also prove beyond a reasonable doubt that the defendant's possession of the firearm was "in or affecting commerce." This means that at some point prior to the defendant's possession, the firearm had traveled in interstate commerce – meaning, from one state to another. It is sufficient for the government to satisfy this element by proving that, at any time prior to the date charged in Count Twelve, the firearm 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 firearm had previously traveled in interstate commerce.

"MULTIPLE CONSPIRACIES" : COUNTS ONE, FIVE, AND TEN

The Second Superseding Indictment contains three separate conspiracy counts: Count One (conspiracy to distribute controlled substances); Count Five (conspiracy to employ persons under age to distribute controlled substances); and Count Ten (conspiracy to use firearms in furtherance of a drug trafficking crime). Each count alleges a separate conspiracy with a different unlawful objective. In order to obtain a conviction on any one of these counts, the Government must prove beyond a reasonable doubt that the defendant entered into a conspiracy to achieve the specific objective alleged in that count. In other words, you must consider the elements of each count and the evidence pertaining to it separately.

"KNOWINGLY" AND "INTENTIONALLY" EXPLAINED

You have been instructed that in order to sustain its burden of proof on each count, the government must prove that the defendant acted knowingly and intentionally. A person acts knowingly and intentionally if he acts voluntarily, and not because of ignorance, mistake, accident, or carelessness. This knowledge element may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case.

VARIANCE: DATES

The Second Superseding Indictment charges that the alleged offenses occurred "on or about" a certain date. It does not matter if the indictment charges that a specific act occurred "on or about" a certain date, and the evidence indicates that, in fact, it was on another date. The law only requires a substantial similarity between the date alleged in the Indictment and the date established by testimony or exhibits.

UNANIMOUS VERDICT REQUIRED

To return a verdict, it is necessary that every juror agree to the verdict. In order to find the defendant guilty or not guilty, your verdict must be unanimous regarding each essential element of the count under consideration. This requirement of unanimity also applies to your decision concerning whether the quantity involved in Count One was 280 grams or more of cocaine base.

JUROR NOTE TAKING

During this trial, you have been provided with pencil 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 or not they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. 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.

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 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 offenses charged in the superseding indictment is a matter exclusively within the responsibility of the judge and should never be considered by the jury in any way in arriving at an impartial verdict.

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. 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 a verdict of guilty or not guilty as to the defendant on each count. 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.

I appoint [redacted] as your foreperson.

Dated at Burlington, in the District of Vermont, this 14th day of July, 2026.

/s/ Geoffrey W. Crawford
Senior Judge
United States District Court