UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Case No. 5:16-cr-94-01
	)	
BRIAN FOLKS,	)	
	)	
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.

Mr. Folks is on trial here on 14 counts which are set out in a written indictment. I would like to remind you again of the function of an indictment. An indictment is a formal way to accuse a defendant of a crime prior to trial. Mr. Folks is not on trial for any act or any conduct not specifically charged in the 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.

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 Brian Folks 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 government must prove the defendant guilty beyond a reasonable doubt. A reasonable doubt 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 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 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.

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 that 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 AND 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, any exhibits that have been admitted into evidence, and all the facts that have been admitted or stipulated. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the defendant's guilt beyond a reasonable doubt, you must find him not guilty. Your verdict must be based solely on the evidence introduced at trial, or the lack thereof.

Evidence may be direct or it may be circumstantial in nature. An example of

direct evidence is a statement by a witness about his or her observation of an event. Circumstantial evidence is evidence which permits a jury to draw an inference relevant to the case. For example, if I ring my friend's doorbell and no one answers, I may infer that she is not at home even though I have no direct evidence of her whereabouts.

STRICKEN TESTIMONY, ATTORNEYS' STATEMENTS, AND THE 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 attorneys and the questions asked by the attorneys are not evidence in the case. 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 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.

EXPERT WITNESSES

Certain witnesses testified as experts. An expert witness is someone who has special knowledge or training in a particular subject area. An expert is permitted to offer a professional opinion within his or her field of expertise. As in the case of other witnesses, you are the sole judges of the credibility of the expert witnesses. You may consider the same factors which guided your determination of the credibility of other witnesses. In the case of an expert witness, you may also consider their professional training, experience, publications and awards if any, and standing and accomplishment within his or her field of expertise.

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.

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 to that testimony whatever weight, if any, you find it deserves.

UNAVAILABLE WITNESSES

There are persons whose names you have heard during the course of the trial but who did not appear here to testify, specifically Hannah A. and Victoria L. These witnesses were unavailable for trial. You should not draw any inferences or reach any conclusions as to what they would have testified to had they been called. Their absence should not affect your judgment in any way.

WITNESSES AND DRUG USE

There has been testimony by at least one witness who was using drugs when the events they observed took place. There is nothing improper about calling such a witness to testify; however, testimony from such a witness should be examined with greater care than the testimony of witnesses who were not using drugs when the events they observed took place, because of the effect the drugs may have had on that person's ability to perceive or describe the events in question.

ACCOMPLICES CALLED BY THE GOVERNMENT

You have heard witnesses who testified that they were actually involved in planning and carrying out the crimes charged in the Fourth Superseding Indictment.

The law allows the use of accomplice testimony. 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, accomplice testimony is of such a nature that it must be scrutinized with great care and viewed with particular caution when you decide how much of that testimony to believe.

You should ask yourselves whether these alleged accomplices would benefit more by lying or by telling the truth. Was their testimony made up in any way because they believed or hoped that they would somehow receive favorable treatment by testifying falsely? Or did they believe that their interest would be best served by testifying truthfully? If you believe that the witness was motivated by hopes of personal gain, was the motivation one which would cause him to lie, or was it one which would cause him to tell the truth? Did this motivation color his testimony?

WITNESSES' PLEA AGREEMENTS

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 tum, 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.

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.

RECORDINGS

The government has offered evidence in the form of audio recordings. This information may have been gathered without the knowledge of all the participants. The use of these procedures to gather evidence is 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.

STIPULATION OF FACTS

The parties have stipulated to certain facts. Specifically, the parties have stipulated that the defendant Brian Folks had been convicted of a crime punishable by a term of imprisonment exceeding on year prior to December 25, 2015. You should consider this fact as established for purposes of the trial. Because the parties have stipulated or agreed to this fact, it is not necessary for the prosecution to introduce evidence to prove this fact.

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.

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 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.

INTRODUCTION TO OFFENSES

The Fourth Superseding Indictment charges fourteen separate crimes, called "counts," against the defendant. Each count has a number.

Count 1 charges that the defendant knowingly and willfully conspired with others between in or about May 2015 and March 2016 to distribute 100 grams or more of heroin and 28 grams or more of cocaine base, which are controlled substances. Counts 3, 5, 8, and 9 charge that the defendant, on various dates in January 2016 and February 2016, knowingly and intentionally distributed heroin. Count 7 charges that on January 20, 2016, the defendant, knowingly and intentionally possessed heroin or cocaine base with the intent to distribute it.

Count 2 charges that the defendant, who was previously convicted of a crime punishable by a term of imprisonment exceeding one year, knowingly possessed a firearm, namely a Beretta Model 92FS 9mm pistol, in and affecting commerce.

Counts 10, 11, 12, 13, and 14 charge that the defendant knowingly, in or affecting interstate commerce, recruited, enticed, harbored, transported, provided, obtained, and maintained by any means the person identified in each count, knowing or in reckless disregard of the fact that force, threats of force, fraud, and coercion would be used to cause

that person to engage in commercial sex acts. Count 10 charges that the defendant did so with respect to Katelynn C. Counts 11 and 12 charge that the defendant did so with respect to Keisha W. during two different time periods. Count 13 charges that the defendant did so with respect to Danielle M. Count 14 charges that the defendant did so with respect to Ayla L.

Count 15 charges that the defendant knowingly, in and affecting interstate commerce, recruited, enticed, harbored, transported, provided, obtained, and maintained by any means Hannah A., having had a reasonable opportunity to observe Hannah A., that Hannah A. had not attained the age of 18 years and would be caused to engage in a commercial sex act.

Count 16 charges that the defendant knowingly used, and caused to be used, one or more facilities in interstate commerce, namely the internet and cellular telephones, with the intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, that is, a business enterprise involving prostitution offenses in violation of the laws of Vermont, and thereafter performed, and caused to be performed, acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of such unlawful activity.

You should draw no inference from and attach no meaning to the absence of Counts 4 and 6 from the Fourth Superseding Indictment.

"ON OR ABOUT" AND "IN OR ABOUT" EXPLAINED

Each of the counts in the Fourth Superseding Indictment charges that the 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 offense was committed on dates

reasonably near the dates alleged in the Fourth Superseding Indictment, it is not necessary for the government to prove that the offense was committed precisely on the dates charged.

COUNT 1

Count One of the Fourth Superseding Indictment reads as follows:

> "Between in or about May of 2015, and in or about March of 2016, in the District of Vermont and elsewhere, the defendants, Brian Folks, aka "Moe," aka "Moet Hart," Donald McFarlan, aka "G," aka "Ghost," and others, known and unknown to the Grand Jury, knowingly and willfully conspired to distribute heroin, a Schedule I controlled substance, and cocaine base, a Schedule II controlled substance.
>
> "With respect to defendants Brian Folks, aka "Moe," aka "Moet Hart," and Donald McFarlan, aka "G," aka "Ghost," their conduct as members of the conspiracy, including the reasonably foreseeable conduct of other members of the conspiracy, involved 28 grams or more of a mixture and substance containing a detectable amount of cocaine base and 100 grams or more of a mixture and substance containing a detectable amount of heroin."

ELEMENTS OF OFFENSE OF CONSPIRACY, 21 U.S.C. § 846

Count 1 charges that the defendant, Brian Folks, engaged in a conspiracy with others to distribute heroin and cocaine base. Title 21 of the United States Code, Section 846, as charged in Count 1 of the Fourth Superseding Indictment, makes it a federal crime 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)(l). Section 841(a)(l) makes it a crime for anyone to knowingly or intentionally distribute a controlled substance. I instruct you that heroin is a Schedule I controlled substance, and cocaine base is a Schedule II controlled substance.

Under the law, a "conspiracy" is an agreement among two or more persons to achieve an unlawful object, in this case the carrying out of the crime of distribution of heroin and cocaine base.

To prove the existence of a conspiracy, it is sufficient to show that the conspirators came to a mutual agreement to accomplish an unlawful act by means of a joint plan or

common design. Because the essence of a conspiracy offense 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.

Although the government alleged that the conspiracy involved both cocaine base and heroin, you need only find that the conspiracy involved one of these controlled substances to find the defendant guilty. Please bear in mind that your decision on this issue as on all others must be unanimous. In other words, you must find unanimously that the purpose of the conspiracy was the distribution of heroin or cocaine base or both. If some of you believe that the purpose of the conspiracy was solely the distribution of heroin, and others of you believe the purpose was solely the distribution of cocaine base, then you must find the Defendant not guilty of Count 1.

In order to return a verdict of guilty as to this count, the government must prove each of the following elements beyond a reasonable doubt:

First, that two or more persons, in some way or manner, came to an agreement to try to accomplish a common and unlawful plan, as charged in Count 1 of the Fourth Superseding Indictment; and

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

FIRST ELEMENT- 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 Count 1 of the Fourth Superseding Indictment.

In order to prove this element, the government must prove that there was a mutual agreement, either spoken or unspoken, between two or more people to cooperate with each

other to accomplish an unlawful act.

You may find that the existence of an agreement to violate the law has been established by direct proof. However, since conspiracy may, by its very nature, be characterized by secrecy, you may also infer its existence from the circumstances of this case and the conduct of the parties involved. Co-conspirators need not be charged with the crime of conspiracy in order for you to find that the defendant had an agreement with other individuals to commit the illegal act charged in the indictment.

SECOND ELEMENT- MEMBERSHIP IN THE CONSPIRACY

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

If you are satisfied that the conspiracy charged in the Fourth Superseding 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. The prosecution has the burden of proving that the defendant participated in the conspiracy with the knowledge of its unlawful purpose and with the specific intention of furthering its business objective.

You are instructed that, while proof of a financial interest in the outcome of a scheme is not essential, if you find that a defendant had such an interest, that is a factor which you may properly consider in determining whether or not that defendant was a member of the conspiracy charged in the Fourth Superseding Indictment.

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 known about all the other members' 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.

The extent of the defendant's participation has no bearing on the issue of the 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. The law does not require that each participant in the conspiracy play an equal role. 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 or leave it at the same time. A member of the conspiracy may stop participating in the conspiracy before the conspiracy ends and one may join a conspiracy after it has already begun. Moreover, 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 a 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 a defendant a member. A person may know, or be friendly with a criminal, without being a criminal himself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy.

I also want to caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. Moreover, the fact that the acts of a defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make that 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.

“KNOWINGLY” AND “WILLFULLY” DEFINED

You have been instructed that to sustain its burden of proof on Count 1, the government must prove that the defendant acted knowingly and 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 the bad purpose of disobeying or disregarding the law. The defendant's conduct was not willful if it was of negligence,

inadvertence, or mistake.

AMOUNT OF DRUGS

If you find that the government has not proven beyond a reasonable doubt the elements that I have just described to you, you will indicate that you find the defendant "Not Guilty" of Count 1 on the special verdict form I will provide you. You will then answer no further questions as to Count 1.

If you find that the government has proven beyond a reasonable doubt the two elements that I have described, then there is another issue you must decide with regard to Count 1. The special verdict form will set forth the questions you must answer.

Count 1 charges the defendant with conspiring to distribute 28 grams or more of a mixture or substance containing a detectable amount of cocaine base or 100 grams or more of a mixture or substance containing a detectable amount of heroin.

You should assess the amount of cocaine base and heroin involved in the conspiracy with regard to the defendant. The government does not have to prove that the defendant directly handled or distributed the particular quantities alleged, although you may consider that evidence along with other evidence to assess the quantity element.

The government can prove the defendant is responsible for the quantity involved in a conspiracy in three ways. First, the government can offer evidence that proves beyond a reasonable doubt that the defendant personally and directly participated in the possession or distribution of the drugs in question. With regard to this type of proof, the government need not prove that the defendant knew the type or amount of drugs in question as long as the government proves beyond a reasonable doubt that the defendant knew the drugs in question were a controlled substance. Second, the government can offer evidence that proves beyond

a reasonable doubt that the defendant knew that the conspiracy involved a particular quantity of a controlled substance or controlled substances during the time period that defendant participated in the conspiracy. Third, the government can offer evidence that proves beyond a reasonable doubt that the conspiracy involved a particular quantity of a controlled substance or substances during the time period that defendant participated in the conspiracy and that, based on all of the circumstances, it was reasonably foreseeable to the defendant that the conspiracy involved the particular quantity. With regard to each of these types of proof, the government must prove beyond a reasonable doubt that the conspiracy at issue is the one described in Count 1.

Remember, you should address this issue and complete the form only if you find the essential elements of the conspiracy alleged in Count 1 have been established. If you decide that the government has proven beyond a reasonable doubt that the charged conspiracy involves 28 grams or more of cocaine base or 100 grams or more of heroin, then you are to indicate that finding on the special verdict form.

BUYER-SELLER TRANSCTION

The Fourth Superseding Indictment charges the defendant was a participant in a criminal conspiracy. The 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.

COUNT2

The Fourth Superseding Indictment charges the defendant with being a person previously convicted of a felony who possessed a weapon shipped in interstate commerce.

The Count reads as follows:

> "On or about December 25, 2015, in the District of Vermont, the defendant, Brian Folks, aka "Moe," aka "Moet Hart," having been convicted of a crime punishable by a term of imprisonment exceeding one year, knowingly possessed in and affecting commerce a firearm, namely a Beretta Model 92FS 9 mm pistol, SN # BER441412."

ELEMENTS OF THE OFFENSE OF UNLAWFUL POSSESSION OF A FIREARM, 18 U.S.C.§ 922(g)(l)

In order to return a verdict of guilty as to this count, the government must prove

each of the following elements beyond a reasonable doubt:

First, that the defendant was convicted, in any court, of a crime punishable by imprisonment for a term exceeding one year;

Second, that the defendant knowingly possessed the firearm; and

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

FIRST ELEMENT - DEFENDANT'S PRIOR CONVICTION

The first element of the offense is that before the date the defendant is charged with possessing the firearm, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year. The parties have stipulated and agreed that defendant Brian Folks was convicted of a crime punishable by a term of imprisonment exceeding one year prior to December 25, 2015.

SECOND ELEMENT- POSSESSION OF FIREARM

The second element which the government must prove beyond a reasonable doubt is that on or about the date set forth in the indictment the defendant knowingly possessed a firearm.

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

As I have instructed you, the government must prove beyond a reasonable doubt that the defendant "possessed" the firearm. The legal concept of possession may differ from the everyday usage of the term, so I will explain it in some detail.

Actual possession is what most of us think of as possession; that is having physical custody or control of an object. For example, if you find that the defendant had the firearm on his person, you may find that he had possession of the firearm. However, a person need not

have actual physical custody of an object in order to be in legal possession of it; this is called constructive possession. If an individual has the ability and intent to exercise substantial control over an object that he does not have in his physical custody, then he is in constructive possession of that item. An example of this from everyday experience would be a person's possession of items he keeps in the safe deposit box of his bank. Although the person does not have physical custody of those items, he exercises substantial control over them and so has legal possession of them. If you find that the defendant had such control over the firearm but did not actually have physical custody of the firearm, then he possessed the firearm under this element just as if he had the firearm in his physical custody.

To satisfy this element, you must also find that the defendant knowingly possessed the firearm. 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, as we commonly use the word. However, the government is not required to prove that the defendant knew that he was breaking the law.

THIRD ELEMENT - FIREARM IN OR AFFECTING COMMERCE

The third element that the government must prove beyond a reasonable doubt is that the firearm 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, the firearm 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 Fourth Superseding Indictment, 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.

In this regard, there has been evidence that the firearm in question was manufactured in a different state than the state where the defendant is charged with possessing it. You are permitted to infer from this fact that the firearm traveled in interstate commerce; however, you are not required to do so.

COUNTS 3, 5, 8, AND 9

Counts 3, 5, 8, and 9 of the Fourth Superseding Indictment charge the defendant with knowingly and intentionally distributing a controlled substance. Title 21, Section 841(a) makes it a federal crime for any person to knowingly or intentionally distribute controlled substances.

The Counts read as follows:

> **Count 3**: On or about January 6, 2016, in the District of Vermont, the defendant, Brian Folks, aka "Moe," aka "Moet Hart," knowingly and intentionally distributed heroin, a Schedule I controlled substance.
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> **Count 5**: On or about January 12, 2016, in the District of Vermont, the defendant, Brian Folks, aka "Moe," aka "Moet Hart," knowingly and intentionally distributed heroin, a Schedule I controlled substance.
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> **Count 8**: On or about January 22, 2016, in the District of Vermont, the defendant, Brian Folks, aka "Moe," aka "Moet Hart," knowingly and intentionally distributed heroin, a Schedule I controlled substance.
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> **Count 9**: On or about February 10, 2016, in the District of Vermont, the defendant, Brian Folks, aka "Moe," aka "Moet Hart," knowingly and intentionally distributed heroin, a Schedule I controlled substance.

ELEMENTS OF THE OFFENSE OF DISTRIBUTION OF A CONTROLLED SUBSTANCE, 21 U.S.C. § 841(a)(l)

To sustain its burden of proof for the crime of distribution of a controlled

substance, the government must prove the following two elements beyond a reasonable doubt:

First, that the defendant knowingly and intentionally distributed a controlled substance, as charged in the Fourth Superseding Indictment; and

Second, that at the time of the distribution, the defendant knew that the substance distributed was a controlled substance.

I instruct you again that heroin, as charged in the distribution counts of the Fourth Superseding Indictment, is a Schedule I 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 word "distribute" means 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 the drugs, negotiating for or receiving the price, and supplying or delivering the drugs in person or through another person may constitute distribution. In short, distribution requires a concrete involvement in the transfer of the drugs.

"KNOWINGLY" AND "INTENTIONALLY" DEFINED

With respect to Counts 3, 5, 8, and 9, 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. You may consider evidence of the defendant's words, acts, or omissions, along with all other evidence, in deciding whether the defendant acted knowingly. A person acts intentionally if he acts deliberately and purposefully, and not because of mistake or accident.

KNOWLEDGE OF THE CONTROLLED SUBSTANCE

Although the government must prove that the defendant knew that he possessed a controlled substance, the government does not have to prove the defendant knew the exact nature of the drugs he possessed. It is enough that the government proves that the defendant knew that he possessed some kind of controlled substance.

Your decision about whether the defendant knew the materials he distributed were a controlled substance involves a decision about the defendant's state of mind. It is obviously impossible to prove directly the operation of the defendant's mind. But a consideration of all the facts and circumstances shown by the evidence and the exhibits in this case may enable you to infer what the defendant's state of mind was. You may rely on circumstantial evidence in determining the defendant's state of mind.

COUNT 7

Count 7 of the Fourth Superseding Indictment charges Brian Folks with knowingly and intentionally possessing heroin and cocaine base with intent to distribute those substances. Title 21, Section 841(a) makes it a federal crime for any person to possess with the intent to distribute, controlled substances.

The Count reads as follows:

"On or about January 20, 2016, in the District of Vermont, the defendant, Brian Folks,

aka "Moe," aka "Moet Hart," knowingly and intentionally possessed with intent to distribute heroin, a Schedule I controlled substance, and cocaine base, a Schedule II controlled substance."

ELEMENTS OF THE OFFENSE OF POSSESSION WITH INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE. 21 U.S.C. § 841(a)

In order to prove this charge against the defendant, the government must establish the following three elements of the crime:

First, that the defendant possessed a controlled substance, here, heroin or cocaine base;

Second, that the defendant knew that he possessed a controlled substance; and,

Third, that the defendant possessed the controlled substance with the intent to distribute it.

I instruct you that heroin is a Schedule I controlled substance, and cocaine base is a Schedule II controlled substance.

DEFINITION OF POSSESSION

I have already instructed you as to the meaning of the word "possession" when I instructed you on the law regarding the possession of a firearm. The term has the same meaning here.

KNOWLEDGE THAT THE DRUGS WERE CONTROLLED SUBSTANCES

The second element the government must prove beyond a reasonable doubt is that the defendant knew that he possessed a controlled substance.

To establish this element, the government must prove that the defendant knew that he possessed a controlled substance, and that his possession was not due to carelessness, negligence, or mistake. If you find that the defendant did not know that he had controlled

substances in his possession, or that he did not know that what he possessed was, in fact, controlled substances, then you must find the defendant not guilty.

Although the government must prove that the defendant knew that he possessed controlled substances, the government does not have to prove that the defendant knew the exact nature of the drugs in his possession. It is enough that the government proves that the defendant knew that he possessed some kind of controlled substance.

INTENT TO DISTRIBUTE

To satisfy the third element the government may prove that the defendant possessed controlled substances with the intent to distribute them. To prove the third element in this way, the government must prove beyond a reasonable doubt that the defendant had control over the drugs with the state of mind or purpose of transferring them to another person.

The same considerations that apply to your determination of whether the defendant knew he possessed controlled substances apply to your decision concerning the defendant's intention to distribute them. You may draw inferences from evidence concerning his behavior. However, you may not convict the defendant on this count unless these inferences convince you beyond a reasonable doubt that the defendant intended to distribute the controlled substances to others.

DEFINITION OF DISTRIBUTION

I have already instructed you as to the meaning of the word “distribution” when I instructed you on the law regarding the distribution of a controlled substances. The term has the same meaning here.

COUNTS 10 - 14

Counts 10 through 14 of the Fourth Superseding Indictment charge Brian Folks with

sex trafficking by force, fraud, or coercion.

The Counts read as follows:

Count 10: Between in or about June 2012 and in or about August 2014, in the District of Vermont, the defendant, Brian Folks, aka "Moe," aka "Moet Hart," knowingly, in and affecting interstate commerce, recruited, enticed, harbored, transported, provided, obtained, and maintained by any means Katelynn C., knowing and in reckless disregard of the fact that force, threats of force, fraud, and coercion would be used to cause Katelynn C. to engage in a commercial sex act.

Count 11: In or about July 2013, in the District of Vermont, the defendant, Brian Folks, aka "Moe," aka "Moet Hart," knowingly, in and affecting interstate commerce, recruited, enticed, harbored, transported, provided, obtained, and maintained by any means Keisha W., knowing and in reckless disregard of the fact that force, threats of force, fraud, and coercion would be used to cause Keisha W. to engage in a commercial sex act.

Count 12: Between in or about June 2015 and in or about February 2016, in the District of Vermont, the defendant, Brian Folks, aka "Moe," aka "Moet Hart," knowingly, in and affecting interstate commerce, recruited, enticed, harbored, transported, provided, obtained, and maintained by any means Keisha W., knowing and in reckless disregard of the fact that force, threats of force, fraud, and coercion would be used to cause Keisha W. to engage in a commercial sex act.

Count 13: In or about June 2015, in the District of Vermont, the defendant, Brian Folks, aka "Moe," aka "Moet Hart," knowingly, in and affecting interstate commerce, recruited, enticed, harbored, transported, provided, obtained, and maintained by any means Danielle M., knowing and in reckless disregard of the fact that force, threats of force, fraud, and coercion would be used to cause Danielle M. to engage in a commercial sex act.

Count 14: Between in or about June 2015 and in or about December 2015, in the District of Vermont, the defendant, Brian Folks, aka "Moe," aka "Moet Hart," knowingly, in and affecting interstate commerce, recruited, enticed, harbored, transported, provided, obtained, and maintained by any means Ayla L., knowing and in reckless disregard of the fact that force, threats of force, fraud, and coercion would be used to cause Ayla L. to engage in a commercial sex act.

ELEMENTS OF THE OFFENSE OF SEX TRAFFICKING BY FORCE, FRAUD, OR COERCION, 18 U.S.C. § 1591

In order to return a verdict of guilty as to counts 10-14, the government must prove the

following elements beyond a reasonable doubt:

First, that the defendant knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained by any means the person identified in each count;

Second, that the defendant did so knowingly or in reckless disregard of the fact that force, threats of force, fraud, or coercion, or any combination of those means, would be used to cause that person to engage in a commercial sex act; and

Third, that the defendant's conduct was in or affected interstate commerce.

FIRST ELEMENT - RECRUITING, ENTICING, HARBORING, TRANSPORTING, PROVIDING, OBTAINING, OR MAINTAINING A PERSON

The first element that the government must prove beyond a reasonable doubt to establish the offense of sex trafficking by force, fraud, or coercion is that the defendant recruited, enticed, harbored, transported, provided, obtained, or maintained the person identified in each count. In considering whether the defendant did any of these things, I instruct you to use the ordinary, everyday definitions of these terms.

SECOND ELEMENT - KNOWLEDGE OR RECKLESS DISREGARD THAT FORCE, FRAUD OR COERCION WOULD BE USED

The second element the government must prove beyond a reasonable doubt to establish the offense of sex trafficking by force, fraud, or coercion is that the defendant knew or recklessly disregarded the fact that force, threats of force, fraud, or coercion, or any combination of those means, would be used to cause the person identified in each count to engage in a commercial sex act.

The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person. The thing of value may be money, or it may be any other tangible or intangible thing that has some value. The government does not have to

prove that a commercial sex act occurred, only that the defendant knew or recklessly disregarded the fact that force, threats of force, fraud, or coercion would be used to cause a person to engage in a commercial sex act.

"Force" means any form of power, violence, or physical pressure exercised upon another person. "Fraud" means that the defendant knowingly made a misstatement or omission of a material fact to entice the person. A material fact is one that would reasonably be expected to be of concern to a reasonable person in relying upon the representation or statement in making the decision. "Coercion" means a threat of serious harm or physical restraint against a person or any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person. A threat is a serious statement expressing an intention to inflict harm, at once or in the future, as distinguished from idle or careless talk, exaggeration, or something said in a joking manner.

The term "serious harm," which I just mentioned in the definition of coercion, means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

"Reckless disregard" of a fact means deliberate indifference to the fact which, if considered in a reasonable manner, indicates that there was a high probability of the fact at issue.

In considering whether the defendant's actions would cause a person to engage in a commercial sex act, you may consider the cumulative effect of the defendant's conduct on that person. In this regard, you may consider, for example, any aspect of the person's age,

background, station in life, physical or mental condition, experience, education, socioeconomic status, or any inequalities between the person and the defendant.

The government does not need to show a link between any specific commercial sex act performed by the person and any particular threat made, or any particular action or act of fraud or coercion taken against her. Rather, it is sufficient if the defendant's actions gave rise to circumstances that would compel a reasonable person in the person's situation to comply with the defendant's demands, in light of the totality of the defendant's conduct, the surrounding circumstances, and any vulnerabilities of the person.

The government does not need to prove physical restraint in order for you to find the defendant guilty of sex trafficking by force, fraud, or coercion. A person who has been placed in such fear or circumstances is under no affirmative duty to try to escape.

In considering whether a person's commercial sex acts were caused by force, fraud, or coercion, the fact that the person may have initially consented or acquiesced, or previously engaged in commercial sex acts, does not mean that the person was not later compelled to engage in a commercial sex act. The question is whether the defendant used force, fraud, or coercion, or any combination of those means, to cause the person to perform or to continue to perform commercial sex acts.

Whether the person was given money, benefits, or gifts, or was able to keep any earnings, is not determinative of whether that person had been compelled through force, fraud or coercion to engage in a commercial sex act.

THIRD ELEMENT- IN OR AFFECTING INTERSTATE COMMERCE

The third and final element the government must prove beyond a reasonable doubt to establish the offense of sex trafficking by force, fraud, or coercion is that the defendant's conduct

was "in" interstate commerce or "affected" interstate commerce. The government does not have to prove both.

"Interstate commerce" simply means the movement of goods, services, money and individuals between any two or more states, territories, and possessions of the United States, including the District of Columbia.

The government is not required to show that the defendant's activities actually crossed state lines to prove that his actions "affected" interstate commerce. Rather, if the defendant's conduct involved the use of goods that moved across state lines, or involved telephones, the internet, or other such facilities of interstate commerce, such as hotels that house out-of-state travelers or are part of a national or international chain, you may find that the acts "affected" interstate commerce.

To satisfy this element, the government must prove that the defendant's conduct was in or affected interstate commerce in any way, no matter how minimal. You do not have to find that a defendant's conduct actually affected interstate commerce if you find that the defendant's conduct would have affected interstate commerce if the defendant had successfully and fully completed his actions.

To show that the defendant's conduct "affected" interstate commerce, it is not necessary for the Government to prove that the defendant specifically knew or intended that his conduct would "affect" interstate commerce. It is only necessary that the natural consequences of such conduct would be to "affect" interstate commerce in some way, even if minor.

COUNT 15

Count 15 of the Fourth Superseding Indictment charges Brian Folks with sex

trafficking of a minor.

The Counts read as follows:

> "Between in or about May 17, 2013 and in or about May 18, 2013, in the District of Vermont, the defendant, Brian Folks, aka "Moe," aka "Moet Hart," knowingly, in and affecting interstate commerce, recruited, enticed, harbored, transported, provided, obtained, and maintained by any means Hannah A., . . . having had a reasonable opportunity to observe Hannah A., that Hannah A. had not attained the age of 18 years and [knowing or in reckless disregard of the fact that Hannah A.] would be caused to engage in a commercial sex act."

ELEMENTS OF THE OFFENSE OF SEX TRAFFICKING A MINOR, 18 U.S.C. § 1591

Title 18 of the United States Code, Section 1591, as charged in Count 15 of the Fourth Superseding Indictment, makes it a federal crime or offense for anyone to knowingly, in or affecting interstate commerce, recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person, having had a reasonable opportunity to observe the person, and would be caused to engage in a commercial sex act.

In order to return a verdict of guilty as to this count, the government must prove the following elements beyond a reasonable doubt:

First, that the defendant knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained by any means Hannah A.;

Second, that Hannah A. was under the age of 18 and the defendant had a reasonable opportunity to observe Hannah A.;

Third, that the defendant knew or recklessly disregarded the fact that Hannah A. would be caused to engage in a commercial sex act; and

Fourth, that the defendant's conduct was in or affecting interstate commerce.

FIRST ELEMENT- RECRUITING, ENTICING, HARBORING, TRANSPORTING, PROVIDING, OBTAINNG, OR MAINTAINING A PERSON

The first element that the government must prove beyond a reasonable doubt to

establish the offense of sex trafficking of a minor is that the defendant recruited, enticed, harbored, transported, provided, obtained, or maintained the minor. As with Counts 10-14, you should use the ordinary, everyday definitions of these terms.

SECOND ELEMENT-REASONABLE OPPORTUNITY TO OBSERVE

The second element the government must prove beyond a reasonable doubt to establish the offense of sex trafficking of a minor is that Hannah A. was under the age of 18 and the defendant had a reasonable opportunity to observe Hannah A.

THIRD ELEMENT- COMMERCIAL SEX ACT

The third element the government must prove beyond a reasonable doubt to establish the offense of sex trafficking of a minor is that the defendant knew or recklessly disregarded the fact that Hannah A. would be caused to engage in a commercial sex act.

I previously defined the term "commercial sex act" with respect to Counts 10 through 14.

You are to apply this definition as you consider the evidence as to Count 15. It is not required that Hannah A. actually performed a commercial sex act as long as the government has proved that the defendant recruited, enticed, harbored, provided, obtained, or maintained her knowing, or in reckless disregard of the fact, that she would be caused to engage in a commercial sex act.

Unlike with respect to Counts 10 through 14, you do not need to find that force, threats, of force, fraud, or coercion were used or would be used to cause the person in Count 15 to engage in a commercial sex act. Consent is not a defense to Count 15 because a minor cannot legally consent.

FOURTH ELEMENT- IN OR AFFECTING INTERSTATE COMMERCE

The fourth and final element that the government must prove beyond a reasonable doubt to establish the offense of sex trafficking of a minor is that the defendant's conduct was either "in" interstate commerce or "affected" interstate commerce. I have previously defined the terms "in interstate commerce" and "affecting interstate commerce" with respect to Counts 10-14. You are to apply those definitions as you consider the evidence as to Count 15.

COUNT 16

Count 16 of the Fourth Superseding Indictment charges Brian Folks with using a facility in interstate commerce in aid of prostitution.

The Counts read as follows:

> "Between in or about June 2012 and in or about February 2016, the defendant, Brian Folks, aka "Moe," aka "Moet Hart," together with others, knowingly used, and caused to be used, one or more facilities in interstate commerce, namely the internet and cellular telephones, with the intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, that is, a business enterprise involving prostitution offenses in violation of the laws of Vermont, and thereafter performed and caused to be performed acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of such unlawful activity."

ELEMENTS OF THE OFFENSE OF USING A FACILITY OF INTERSTATE COMMERCE IN AID OF PROSTITUTION, 18 U.S.C. § 1952

Title 18 of the United States Code, Section 1952, as charged in Count 16 of the Fourth Superseding Indictment, makes it a federal crime or offense for anyone to use any facility in interstate commerce with the intent to knowingly promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any business enterprise involving prostitution offenses in violation of the laws of Vermont, and thereafter perform or attempt to perform an act in furtherance of that unlawful activity.

In order to return a verdict of guilty as to this count, the government must prove the

following elements beyond a reasonable doubt:

First, that the defendant used or caused to be used any facility in interstate commerce;

Second, that the defendant's use of the facility in interstate commerce was done with the intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of an unlawful activity; and

Third, that after the use of the facility in interstate commerce, the defendant performed or caused to be performed an act in furtherance of this unlawful activity.

FIRST ELEMENT - FACILITY IN INTERSTATE COMMERCE

The first element the government must prove beyond a reasonable doubt to establish the offense of using a facility in interstate commerce in aid of prostitution is that the defendant used or caused to be used a facility in interstate commerce.

A "facility in interstate commerce" means any method of communication between one state and another, for example, the internet or a telephone.

The government need not prove that the defendant knew that he was using a facility in interstate commerce. Nor need the government prove that the defendant intended to use a facility in interstate commerce. All the government must prove with respect to the first element is that the defendant did, in fact, use a facility in interstate commerce.

SECOND ELEMENT - INTENTION TO PROMOTE, MANAGE, ESTABLISH, OR CARRY ON AN UNLAWFUL ACTIVITY

The second element the government must prove beyond a reasonable doubt to establish the offense of using a facility in interstate commerce in aid of prostitution is that the defendant used the facility in interstate commerce with the intent to promote, manage, establish, or carry on or facilitate the promotion, management, establishment, or carrying on of

an unlawful activity.

To satisfy this element the government must prove beyond a reasonable doubt that the defendant used the facility in interstate commerce for the purpose of facilitating the unlawful activity.

The "unlawful activity" the defendant is charged with here is a business enterprise involving prostitution offenses in violation of the laws of Vermont.

I now instruct you that under Title 13, Section 2632 of the Vermont Statutes it is unlawful for a person to engage in prostitution or assignation or to aid and abet prostitution or assignation by any means whatsoever.

Under Vermont law, the term "prostitution" includes both the offering or receiving of the body for sexual intercourse for hire. The term "assignation" means the making of an appointment or engagement for prostitution or lewdness.

In order to prove the second element of Count 16, the government does not have to prove that the furtherance of the unlawful activity was the defendant's sole purpose in using an interstate facility. It is sufficient if the government proves that one of the defendant's reasons for using an interstate facility was to further the unlawful activity, meaning to make the unlawful activity easier or to facilitate it.

You are thus being asked to consider the defendant's state of mind to determine his purpose in using an interstate facility. You may determine the defendant's intent from all the evidence that has been placed before you, including the statements of the defendant and his conduct before and after use of the interstate facility.

The government must also prove that the unlawful activity was a business enterprise. A "business enterprise" is a continuous course of conduct or series of transactions to make a

profit, not a casual, sporadic, or isolated activity. If you find that the unlawful activity was an isolated incident, and was not part of an ongoing course of criminal conduct, you must find the defendant not guilty. The government does not have to show that the defendant engaged in the unlawful activity for a particular length of time. Nor must the government prove that the unlawful activity was defendant's primary pursuit or occupation, or that it actually turned a profit.

THIRD ELEMENT - ACT IN FURTHERANCE OF THE UNLAWFUL ACTIVITY

The third element that the government must prove beyond a reasonable doubt to establish the offense of using a facility in interstate commerce in aid of prostitution is that the defendant knowingly performed or caused to be performed an act to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of the unlawful activity. The act in furtherance of the unlawful activity need not itself be illegal. However, you must find unanimously that this act came after the use of an interstate facility.

AIDING AND ABETTING
COUNTS 3, 5, and 7-16

Counts 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the Fourth Superseding Indictment charge the defendant both with committing the crime as a principal and with aiding and abetting the 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, abets, counsels, commands, induces, or procures its commission, is punishable as a principal."

I have already instructed you on the law regarding the crimes as a principal. Now I will instruct you what it means to aid and abet the same crimes.

AIDING AND ABETTING EXPLAINED
COUNTS 3, 5, and 7-16

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

UNANIMOUS VERDICT REQUIRED

To return a verdict, it is necessary that every juror agree to the verdict. In order to find the defendant guilty, your verdict must be unanimous regarding each essential element of the offense alleged in each count. You should consider each count separately and return a verdict on each count. Your verdict may be different on various counts. But you should not return a verdict on a particular count unless your decision is unanimous.

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. 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.

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 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. 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_____as your foreperson.

Dated at Burlington, in the District of Vermont, this 9th day of May, 2019.

/s/William K. Sessions III

William K. Sessions III
District Court Judge