

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

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UNITED STATES OF AMERICA

V.

LAWRENCE JACKSON

Case No. 2:21-cr-00113

**JURY CHARGE**

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

This case is a criminal prosecution brought by the United States of America against Defendant LAWRENCE JACKSON. The indictment charges LAWRENCE JACKSON with seven counts. The indictment reads as follows:

### Count One

Between in or about January 2021 to on or about November 23, 2021, in the District of Vermont and elsewhere, the defendant LAWRENCE JACKSON, aka “Boo-Bee,” and others, known and unknown, knowingly and willfully conspired to distribute cocaine and cocaine base, both Schedule II controlled substances.

LAWRENCE JACKSON's conduct as a member of the conspiracy, including the reasonably foreseeable conduct of other members of the conspiracy, involved 500 grams or more of a mixture and substance containing a detectable amount of cocaine.

## Count Two

On or about August 21, 2020, in the District of Vermont, the defendant LAWRENCE JACKSON, aka “Boo-Bee,” knowingly and intentionally distributed cocaine, a Schedule II controlled substance.

### Count Three

On or about September 24, 2020, in the District of Vermont, the defendant LAWRENCE JACKSON, aka “Boo-Bee,” knowingly and intentionally

distributed cocaine base, a Schedule II controlled substance.

**Count Five**

On or about November 23, 2021, in the District of Vermont, the defendant LAWRENCE JACKSON, aka “Boo-Bee,” knowingly and intentionally possessed with intent to distribute cocaine and cocaine base, both Schedule II controlled substances.

**Count Six**

Between in or about January 2021 to on or about November 23, 2021, in the District of Vermont and elsewhere, the defendant LAWRENCE JACKSON, aka “Boo-Bee,” and others known and unknown, knowingly and willfully conspired to use firearms during and in relation to, and to possess firearms in furtherance of, a drug trafficking crime for which they may be prosecuted in a court of the United States, namely the offense in Count One, in violation of Title 18, United States Code, Section 924(c).

**Count Seven**

Between in or about January 2021 to on or about November 23, 2021, in the District of Vermont, the defendant LAWRENCE JACKSON, aka “Boo-Bee,” knowingly carried and used firearms during and in relation to drug trafficking crimes, and knowingly possessed firearms in furtherance of drug trafficking crimes, for which he may be prosecuted in a court of the United States, namely the offense in Count One.

**Count Eight**

Between in or about the Spring of 2021 to on or about November 23, 2021, in the District of Vermont, the defendant LAWRENCE JACKSON, aka “Boo-Bee,” knowing that he had been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed in and affecting commerce a firearm, to wit: a Taurus “The Judge” .410/.45 caliber revolver.

**ROLE OF THE INDICTMENT**

At this time, I would like to remind you of the function of an indictment. An indictment is merely a formal way to accuse a defendant of a crime before trial. An indictment is not evidence. An indictment does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the charges against the defendant. The defendant has pleaded not guilty to the counts in the indictment. You have been chosen and sworn as jurors in this case to

determine the issues of fact that have been raised by the allegations in 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 government.

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

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

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

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

In addition, nothing I say in these instructions should be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts; rather, that job is yours alone. You must perform your duty as jurors with complete fairness and impartiality. You should consider the evidence carefully and without sympathy, bias, or prejudice for or against any party. All parties

expect that you will diligently examine all of the evidence, follow the law as it is now being given to you, and reach a just verdict regardless of the consequences.

**JURORS' EXPERIENCE OR SPECIALIZED KNOWLEDGE**

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

**JURORS' SYMPATHY, PASSION, OR PREJUDICE**

In arriving at a verdict, you must not permit yourselves to be influenced in the slightest degree by sympathy, passion, or prejudice, or any other emotion in favor of or against either party. The law forbids you from being governed by mere sentiment, conjecture, sympathy, passion, or prejudice.

**EQUALITY BEFORE THE COURT**

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

**GOVERNMENT AS A PARTY**

You are to perform the duty of finding the facts without bias or prejudice toward any party. You are to perform this duty in an attitude of complete fairness and impartiality.

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

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded 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.

**RACE, RELIGION, NATIONAL ORIGIN, SEX, AGE, SEXUAL  
ORIENTATION, OR GENDER IDENTITY**

You may not consider the race, religion, national origin, sex, sexual orientation, or gender identity of the defendant, any of the witnesses, and the lawyers in your deliberations over the verdict or in the weight given to any evidence. You must decide the case solely on the evidence and the law before you and must not be influenced by any personal likes or dislikes, opinions, or prejudices, including unconscious bias.

**REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE**

The government must prove the defendant guilty beyond a reasonable doubt. The question is: what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt 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 element of the crime charged beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is also not 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, then it is your duty to find the defendant not guilty. On the other hand, if, after a fair and impartial consideration of all the evidence, you are satisfied of the defendant's guilt beyond a reasonable doubt, you should vote to convict.



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

### **EVIDENCE**

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

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

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

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

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

**EVIDENCE OBTAINED BY SEARCH**

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

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

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

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

**STRICKEN TESTIMONY, ATTORNEYS' AND SELF-REPRESENTED PARTIES' STATEMENTS AND OBJECTIONS, AND THE COURT'S RULINGS**

I caution you that you should entirely disregard any testimony or exhibit that has been excluded or stricken from the record. Likewise, the arguments of attorneys and a party acting as his or her own attorney and the questions they ask 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 and a party acting as his or her own attorney have a duty to object to evidence they believe is not admissible. You must not hold it against either side if they made an objection.

**CREDIBILITY OF WITNESSES**

You, as jurors, are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness, because you may accept or reject the testimony of any witness, in whole or in

part. In weighing the testimony of the witnesses you have heard, you should consider: their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if any; their resentment or anger, if any, toward the defendant; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper. You may accept all of it, some of it, or reject it altogether.

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

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons may hear or see things differently, or may have a different point of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

### **INTEREST IN THE OUTCOME**

As a general matter, in evaluating the credibility of each witness, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest may create a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering has an interest in the



outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it only with great care.

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

### **LAW ENFORCEMENT WITNESSES**

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

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

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

### **PRIOR INCONSISTENT STATEMENTS OF A WITNESS**

You have heard evidence that a witness made a statement on an earlier occasion which counsel argues is inconsistent with the witness's trial testimony. Evidence of the prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself or herself. If you find that the witness made an earlier statement that conflicts with his or her trial testimony, you may consider that fact in deciding how much of his or her trial testimony, if any, to believe.

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

**DEFENDANT NOT TESTIFYING**

You may have observed that the defendant did not testify in this case. A defendant has a constitutional right not to do so. He does not have to testify, and the government may not call him as a witness. A defendant's decision not to testify raises no presumption of guilt and does not permit you to draw any unfavorable inference.

Similarly, the law never imposes on a defendant the burden or duty of calling any witness, producing any evidence, or cross-examining the witnesses for the government. The burden is at all times upon the government to prove guilt beyond a reasonable doubt, and that burden never shifts to a defendant. A defendant is never required to prove that he is not guilty.

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

**BIAS AND PREJUDICE**

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 crime charged to interfere with your deliberations, or to influence the weight given to any of the evidence.

**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.

**COUNT ONE:**

**CONSPIRACY TO DISTRIBUTE COCAINE BASE**

**AND 500 GRAMS OR MORE OF COCAINE**

**ESSENTIAL ELEMENTS OF THE OFFENSE**

Count One of the indictment charges that the defendant, LAWRENCE JACKSON, engaged in a conspiracy with others to distribute cocaine base and at least 500 grams of cocaine. Title 21, United States Code, Section 846, as charged in Count One of the indictment, makes it a separate federal crime or offense for anyone to conspire or agree with someone else to do something which, if actually carried out, would be a violation of Section 841(a)(1). Section 841(a)(1) makes it a crime for anyone to knowingly or intentionally distribute a controlled substance. I instruct you that cocaine and cocaine base are both controlled substances.

Under the law, a “conspiracy” is an agreement or a “partnership in criminal purposes” in which each member becomes the agent or partner of each other member. To establish a conspiracy offense, it is sufficient to show that the conspirators came to a mutual understanding to accomplish an unlawful act by means of a joint plan or common design. Also, 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 in this case there has been evidence introduced from which you may find that actual distribution of cocaine and cocaine base occurred.

The government must prove beyond a reasonable doubt:

First: Two or more persons in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the indictment; and

Second: The defendant knowingly and willfully became a member of such conspiracy.

Because the agreement is the essence of the offense, it is not necessary for the government to prove that an overt act was committed in furtherance of the conspiracy.

### **EXISTENCE OF AN 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 One of the indictment.

For the government to satisfy this element, you need not find that the alleged members of the conspiracy met together and entered into any express or formal agreement. Similarly, you need not find that the alleged conspirators stated, in words or writing, what the scheme was, its object or purpose, or every precise detail of the scheme or the means by which its object or purpose was to be accomplished. What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act.

You may find that the existence of an agreement to disobey or disregard the law has been established by direct proof. However, since conspiracy is, by its very nature, characterized by secrecy, you may also infer its existence from the circumstances of this case and the conduct of the parties involved.

In the context of conspiracy cases, actions often speak louder than words. In this regard, you may, in determining whether an agreement existed here, consider the actions and statements of all of those you find to be participants as proof that a common design existed on the part of the persons charged to act together to accomplish an unlawful purpose.

**MEMBERSHIP IN THE CONSPIRACY**

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

If you are satisfied that the conspiracy charged in Count One of the indictment existed, you must next ask yourselves who the members of that conspiracy were. In deciding whether the defendant was, in fact, a member of the conspiracy, you should consider whether the defendant knowingly joined the conspiracy. Did he participate in it with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective as an associate or worker?

In that regard, it has been said that in order for a defendant to be deemed a participant in a conspiracy, he must have had a stake in the venture or its outcome. You are instructed that, while proof of a financial interest in the outcome of a scheme is not essential, if you find that the defendant had such an interest that is a factor which you may properly consider in determining whether or not the defendant was a member of the conspiracy charged in the indictment.

As I mentioned 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.

The defendant's knowledge is a matter of inference from the facts proved. In that regard, 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 the other members' activities. In addition, 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 a defendant's guilt. A conspirator's liability is not measured by the extent or duration of his participation. 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 the 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 may join a conspiracy after it has already begun. 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. If the defendant understands the unlawful nature of a plan and knowingly joins in that plan on one occasion that is sufficient to convict him for conspiracy even though he had not participated before and even though he played a minor part.

I caution you, however, that the defendant's mere presence at the scene of the alleged crime does not, by itself, make him or her a member of the conspiracy. Similarly, mere association with one or more members of the conspiracy does not automatically make the defendant a member. A person may know, or be friendly with, a criminal, without being a criminal himself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy. Similarly, proof that the defendant had a financial interest in the outcome of a scheme, in and of itself, does not suffice to prove membership. Presence or association with conspirators and financial interest, however, are factors that you may consider among others to determine whether the defendant was a member of the conspiracy.

I also caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. Furthermore, 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. What is necessary is that the defendant must have participated with knowledge of at least some of the purposes or

objectives of the conspiracy and with the intent of aiding in the accomplishment of those unlawful ends.

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

If you find that the government has proven beyond a reasonable doubt each of the essential elements of Count One, you must find the defendant guilty of Count One and enter your verdict on the verdict form. If you find that the government has not proven the defendant guilty beyond a reasonable doubt on Count One, you must enter a not guilty verdict on Count One.

**“ON OR ABOUT” DEFINED**

The 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 indictment, it is not necessary for the government to prove that the offense was committed precisely on the dates charged.

As to Count One, as I have instructed you, 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. Therefore, to find the defendant, LAWRENCE JACKSON, guilty of Count One, you need not find that his participation in the conspiracy spanned the entire period alleged in the indictment.

**“KNOWINGLY” AND “WILLFULLY” DEFINED**

You have been instructed that to sustain its burden of proof on Count One, the government must prove that the defendant acted knowingly 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 the 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 to disobey or to disregard the law. The defendant's conduct was not willful if it was due to negligence, inadvertence, or mistake.

### **"DISTRIBUTION" DEFINED**

Count One alleges the defendant, LAWRENCE JACKSON, knowingly and willfully conspired with others "to distribute" cocaine and cocaine base. The term "to distribute," in this context, and as used in these instructions, means to deliver a controlled substance, in this case, cocaine and cocaine base.

"Deliver" means the actual, constructive, or attempted transfer of cocaine or cocaine base. 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, cocaine or cocaine base.

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

### **FINDING AS TO QUANTITY OF CONTROLLED SUBSTANCES REQUIRED**

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

However, if you find that the government has proven beyond a reasonable doubt the elements of conspiracy to distribute a controlled substance, then there is one more issue that you must decide with regard to Count One: if cocaine was involved, the quantity of cocaine for which the defendant is responsible. Consistent with the other

aspects of the charge, the government bears the burden of proof beyond a reasonable doubt on this issue.

I have provided you with a special verdict form asking you a question with regard to the type of controlled substances the conspiracy involved and the amount of cocaine for which the defendant is responsible. As to the amount of cocaine, the special verdict form asks whether the government has proven beyond a reasonable doubt that the conspiracy involved 500 grams or more of a mixture or substance containing a detectible amount of cocaine.

In proving the amount of cocaine involved in the conspiracy with regard to the defendant, 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 assess the quantity element. Rather, in deciding whether the government has proven that the conspiracy involved a particular quantity of cocaine, you may consider quantities the defendant was personally involved in and quantities he knew or reasonably should have known other members of the conspiracy were involved in or would be involved in at the time the defendant was a member of the conspiracy.

Remember, you should address the issue of the quantity of cocaine 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. If you decide that the government has not proven beyond a reasonable doubt that the charged conspiracy involved 500 grams or more of cocaine, then you must find the defendant not guilty of the charged amount, even if you find that the defendant was otherwise involved in a lesser quantity of cocaine.

**COUNTS TWO AND THREE:**

**DISTRIBUTION OF A CONTROLLED SUBSTANCE**

**ESSENTIAL ELEMENTS OF THE OFFENSE**

Count Two of the indictment charges the defendant with distributing cocaine and Count Three of the indictment charges the defendant with distributing cocaine base. 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: The defendant knowingly and intentionally distributed a controlled substance, as charged in the indictment; and

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

I instruct you that cocaine and cocaine base are both Schedule II controlled substances.

**“DISTRIBUTION” DEFINED**

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

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

**“KNOWINGLY” AND “INTENTIONALLY” DEFINED**

With respect to Counts Two and Three, 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 the 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**

Although the government must prove beyond a reasonable doubt that the defendant distributed cocaine for Count Two and cocaine base for Count Three, the government does not have to prove that, at the time of distribution, the defendant knew the exact nature of the controlled substance he distributed. It is enough that the



government proves that the defendant knew that he distributed some kind of controlled substance.

Your decision 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 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 the defendant's 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. You may rely on both direct and circumstantial evidence in determining the defendant's state of mind.

If you find that the government has proven beyond a reasonable doubt each of the essential elements of Count Two and Count Three, you must find the defendant guilty of Count Two and Count Three and enter your verdict on the verdict form. If you find that the government has not proven the defendant guilty beyond a reasonable doubt on Count Two and Count Three, you must enter a not guilty verdict on Count Two and Count Three.

**COUNT FIVE:**  
**POSSESSION WITH INTENT TO DISTRIBUTE**  
**A CONTROLLED SUBSTANCE**  
**ESSENTIAL ELEMENTS OF THE OFFENSE**

The defendant is charged in Count Five with possession with intent to distribute cocaine and cocaine base. To sustain its burden of proof for the crime of possession with intent to distribute a controlled substance, the government must prove the following three elements beyond a reasonable doubt:

First: The defendant knowingly and intentionally possessed a controlled substance, as charged in the indictment;

Second: At the time of the possession, the defendant knew that the substance was a controlled substance; and

Third: At the time of the possession, the defendant intended that he or someone else would distribute the controlled substance.

I instruct you that cocaine and cocaine base are both Schedule II controlled substances.

**“POSSESSION” DEFINED**

The word “possess” means to own or to exert control over. The word “possession” can take on several different, but related, meanings. The law recognizes two kinds of “possession” - actual possession and constructive possession. A person who knowingly has direct physical control over a thing at a given time is in actual possession of it. For example, a person wearing a wristwatch or carrying keys in his or her pocket has actual possession of these objects.

However, a person need not have actual physical control over an object in order to be in legal possession of it. A person who, although not in actual possession, knowingly has dominion and control over the place where a thing is located and has the ability and intention to exercise control over that thing may be in constructive possession of it.

The law recognizes that “possession” may be sole or joint. If one person alone has actual or constructive possession, then possession is sole. However, it is possible that more than one person may have the power and intent to exercise control over something. If two or more persons share actual or constructive possession of controlled substances, then possession is joint. If you find that the defendant had such power and intent, then you may find that he possessed the controlled substances under this element even if he possessed the controlled substances jointly with another.

Possession of controlled substances cannot be found solely on the basis that the defendant was near or close to the controlled substances. Nor can it be found simply because he was present at a scene where controlled substances were involved, or solely because he associated with a person who did control the controlled substances or the location where they were found. However, these factors may be considered by you, in connection with all the other evidence, in making your decision about whether the defendant possessed the controlled substances as alleged in this case.

You may find that the element of “possession” as that term is used in these

instructions is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession of the controlled substances, either alone or jointly with others.

**INFERENCE FROM CONTROL OVER PLACE**

**WHERE FOUND OR LOCATED**

A defendant may own or have control over the place where the controlled substances are found or located. When the defendant is the sole person having such ownership or control, this control is significant evidence of the defendant's control over the controlled substances themselves, and thus of his possession of the controlled substances. You should note, however, that the defendant's sole ownership or control of a location or place does not necessarily mean that the defendant had control and possession of the controlled substances found or located in it.

A defendant may also share ownership or control of the place where the controlled substances are found or located. In this event, the controlled substances may be possessed by only one person, or by some of the people who control the place, or by all of them. However, without more, the fact that a particular defendant had joint ownership or control over the place where the controlled substances were found or located is not sufficient evidence to find that the defendant possessed the controlled substances found there. In order to find that a particular defendant possessed controlled substances because of his or her joint ownership or control over the place where they were found or located, you must find beyond a reasonable doubt that the defendant knew about the presence of the controlled substances and intended to exercise control over them.

**KNOWLEDGE THAT SUBSTANCES WERE CONTROLLED**

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

Although the government must prove that the defendant knew that he possessed a controlled substance, the government does not have to prove that the defendant knew the

exact nature of the controlled substances in his possession. It is enough that the government proves that the defendant knew that he possessed a controlled substance beyond a reasonable doubt. I have already instructed how you may evaluate the defendant's state of mind.

### **INTENT TO DISTRIBUTE**

To prove the third element of Count Five, the government must prove beyond a reasonable doubt that the defendant had control over the controlled substances with the state of mind or purpose to transfer them to another person.

Since you cannot read the defendant's mind, you must make inferences from his behavior. However, you may not convict the defendant unless these inferences convince you beyond a reasonable doubt that the defendant intended to distribute the controlled substances.

When I say that you must find that the defendant intended to distribute the controlled substances, this does not mean that you must find that the defendant intended to personally distribute or deliver the controlled substances. It is sufficient if you find that the defendant intended to cause or assist in the distribution of the controlled substances.

In essence, what you are determining is whether the controlled substances in the defendant's possession were for his personal use or for the purpose of distribution. It may be possible to make this determination from the quantity of controlled substances found in the defendant's possession. The possession of a large quantity of controlled substances does not necessarily mean that the defendant intended to distribute them. On the other hand, a defendant may have intended to distribute controlled substances even if he did not possess large amounts of them. Other physical evidence, such as paraphernalia for the packaging or processing of controlled substances, may show intent. There might also be evidence of a plan to distribute. You should make your decision whether the defendant intended to distribute the controlled substances you find were in his possession from all the evidence presented.

If you find that the government has proven beyond a reasonable doubt each of the essential elements of Count Five, you must find the defendant guilty of Count Five and

enter your verdict on the verdict form. If you find that the government has not proven the defendant guilty beyond a reasonable doubt on Count Five, you must enter a not guilty verdict on Count Five.

**COUNT SIX:**

**CONSPIRACY TO USE FIREARMS DURING AND IN RELATION TO A DRUG  
TRAFFICKING CRIME AND TO POSSESS FIREARMS IN FURTHERANCE  
OF A DRUG TRAFFICKING CRIME**

**ESSENTIAL ELEMENTS OF THE OFFENSE**

Count Six of the indictment charges that the defendant, LAWRENCE JACKSON, engaged in a conspiracy with others to use a firearm during and in relation to a drug trafficking crime, as charged in Count One, or to possess a firearm in furtherance of a drug trafficking crime, as charged in Count One. Under the law, a “conspiracy” is an agreement or a “partnership in criminal purposes” in which each member becomes the agent or partner of each other member.

To establish a conspiracy offense, it is sufficient to show that the conspirators came to a mutual understanding to accomplish an unlawful act by means of a joint plan or common design. Also, 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.

The government must prove beyond a reasonable doubt:

First: that two or more persons agreed to do one of the following:

- a. to use a firearm during and in relation to a drug trafficking crime which may be prosecuted in federal court; or
- b. to possess a firearm in furtherance of a drug trafficking crime which may be prosecuted in federal court.

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

Because the agreement is the essence of the offense, it is not necessary for the government to prove that an overt act was committed in furtherance of the conspiracy.



### **EXISTENCE OF AN 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 Six of the indictment.

For the government to satisfy this element, you need not find that the alleged members of the conspiracy met together and entered into any express or formal agreement. Similarly, you need not find that the alleged conspirators stated, in words or writing, what the scheme was, its object or purpose, or every precise detail of the scheme or the means by which its object or purpose was to be accomplished. What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act.

You may find that the existence of an agreement to disobey or disregard the law has been established by direct proof. However, since conspiracy is, by its very nature, characterized by secrecy, you may also infer its existence from the circumstances of this case and the conduct of the parties involved.

In the context of conspiracy cases, actions often speak louder than words. In this regard, you may, in determining whether an agreement existed here, consider the actions and statements of all of those you find to be participants as proof that a common design existed on the part of the persons charged to act together to accomplish an unlawful purpose.

### **MEMBERSHIP IN THE CONSPIRACY**

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

If you are satisfied that the conspiracy charged in Count Six of the indictment existed, you must next ask yourselves who the members of that conspiracy were. In deciding whether the defendant was, in fact, a member of the conspiracy, you should consider whether the defendant knowingly joined the conspiracy. Did he participate in it

with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective as an associate or worker?

In that regard, it has been said that in order for a defendant to be deemed a participant in a conspiracy, he must have had a stake in the venture or its outcome. You are instructed that, while proof of a financial 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 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.

The defendant's knowledge is a matter of inference from the facts proved. In that regard, 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 the other members' activities. In addition, 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 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. 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 may join a conspiracy after

it has already begun. 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. If a defendant has an understanding of the unlawful nature of a plan and knowingly joins in that plan on one occasion that is sufficient to convict him for conspiracy even though he had not participated before and even though he played a minor part.

I caution you, however, that a defendant's mere presence at the scene of the alleged crime does not, by itself, make him or her a member of the conspiracy. Similarly, mere association with one or more members of the conspiracy does not automatically make 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. Similarly, proof that the defendant had a financial interest in the outcome of a scheme, in and of itself, does not suffice to prove membership. Presence or association with conspirators and financial interest, however, are factors that you may consider among others to determine whether the defendant was a member of the conspiracy.

I also caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. Furthermore, 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. What is necessary is that the defendant must have participated with knowledge of at least some of the purposes or objectives of the conspiracy and with the intent of aiding in the accomplishment of those unlawful ends.

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

**“ON OR ABOUT” DEFINED**

The 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 indictment, it is not necessary for the government to prove that the offense was committed precisely on the dates charged.

As to Count Six, as I have instructed you, 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. Therefore, to find the defendant, LAWRENCE JACKSON, guilty of Count Six, you need not find that his participation in the conspiracy spanned the entire period alleged in the indictment.

**“KNOWINGLY” AND “WILLFULLY” DEFINED**

You have been instructed that to sustain its burden of proof on Count Six, 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 to disobey or to disregard the law. The defendant’s conduct was not willful if it was due to negligence, inadvertence, or mistake.

**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.

### **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 it is not sufficient to constitute a use of the firearm.

### **POSSESSION**

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. To possess a firearm in furtherance of the crime means that the firearm helped forward, advance, or promote the commission of the crime. The mere possession of the firearm at the scene of the crime is not sufficient under this definition. The firearm must have played some part in furthering the crime in order for this element to be satisfied.

### **UNANIMITY OF THEORY**

Count Six of the indictment alleges the defendant conspired to commit the crime of knowingly using firearms during and in relation to drug trafficking crimes and knowingly possessing firearms in furtherance of drug trafficking crimes in two ways. The first is that the defendant agreed with at least one other person that a firearm 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 a firearm 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 Six. Proof beyond a reasonable doubt on one is enough. 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 agreed with at least one other person that a firearm would be used during and in relation to the drug trafficking crime charged in Count One; or you must agree beyond a reasonable doubt that the defendant agreed with at least one other person that a firearm would be possessed in furtherance of the drug trafficking crime charged in Count One.

If you find that the government has proven beyond a reasonable doubt each of the essential elements of Count Six, you must find the defendant guilty of Count Six and enter your verdict on the verdict form. If you find that the government has not proven the defendant guilty beyond a reasonable doubt on Count Six, you must enter a not guilty verdict on Count Six.

**COUNT SEVEN:**

**CARRY AND USE OF FIREARMS DURING AND IN RELATION TO A DRUG  
TRAFFICKING CRIME AND  
POSSESSION OF FIREARMS IN FURTHERANCE OF A DRUG TRAFFICKING  
CRIME**

**ESSENTIAL ELEMENTS OF THE OFFENSE**

The defendant is charged in Count Seven with knowingly carrying and using firearms during and in relation to the drug trafficking crime charged in Count One, and knowingly possessing firearms in furtherance of the drug trafficking crime charged in Count One. To sustain its burden of proof for this crime, the government must prove the following elements beyond a reasonable doubt:

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

Second: The defendant knowingly used or carried a firearm or firearms during and in relation to the commission of, or knowingly possessed a firearm in furtherance of, the crime charged in Count One.

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 cocaine and cocaine base. I instruct you that this crime is a drug trafficking crime. However, it is for you to determine that the government has proven beyond a reasonable doubt that the defendant committed the crime as charged. If upon review of all the evidence you find that the government has failed to prove Count One beyond a reasonable doubt, then you will proceed no further. You must enter a finding of not guilty on the verdict form as to Count Seven. Count Seven is to be considered only if you first find that the defendant is guilty under Count One, as charged. In reaching your verdict on Count Seven, you may consider the evidence of Count One only for the purpose of determining whether the elements of Count Seven have been satisfied.

The second element the government must prove beyond a reasonable doubt is that the defendant knowingly used or carried a firearm during and in relation to or that the defendant knowingly possessed a firearm in furtherance of the commission of the crime 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.

In order to prove that the defendant used a firearm or firearms, the government must prove beyond a reasonable doubt an active employment of a firearm or firearms by the defendant during and in relation to the commission of the drug trafficking crime charged in Count One. This does not mean that the defendant must actually fire or attempt to fire the firearm, although those would obviously constitute use of the weapon. Brandishing, displaying, or even referring to the firearm so that others present knew that the defendant had the firearm 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 it is not sufficient to constitute a use of the firearm.

In order to prove that the defendant carried firearms, the government must prove

beyond a reasonable doubt that the defendant had the firearm within his control in such a way that it furthered the commission of the drug trafficking crime charged in Count One, or was an integral part of the commission of the drug trafficking crime charged in Count One. The defendant did not necessarily have to hold the firearm physically, that is, have actual possession of it on his person. If you find that the defendant had dominion and control over the place where the firearm was located, and had the power and intention to exercise control over the firearm in such a way that it furthered the commission of a drug trafficking crime, you may find that the government has proven that the defendant carried the weapon. It is not sufficient to prove carrying if all the government has proven is that the firearm was transported in a vehicle in which the defendant was riding. There must be proof that the defendant knew of the weapon's presence and had the power and intention to exercise control of the weapon so that it was available for his use in the commission of the crime if the need arose.

To prove that the defendant possessed the firearm in furtherance of the crime, the government must prove that the defendant had possession of the firearm and that such possession was in furtherance of that crime. Possession means that defendant 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. To possess a firearm in furtherance of the crime means that the firearm helped forward, advance, or promote the commission of the crime. The mere possession of the firearm at the scene of the crime is not sufficient under this definition. The firearm must have played some part in furthering the crime in order for this element to be satisfied.

To satisfy this element, you must also find that the defendant carried or used or possessed the firearm knowingly. This means that he carried or used or 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

**UNANIMITY OF THEORY**

Count Seven of the indictment alleges the defendant committed the crime of knowingly carrying and using firearms during and in relation to a drug trafficking crime and knowingly possessing firearms in furtherance of a drug trafficking crime in three ways. The first is that the defendant knowingly carried a firearm during and in relation to the drug trafficking crime charged in Count One. The second is that the defendant knowingly used a firearm during and in relation to the drug trafficking crime charged in Count One. The third is that the defendant knowingly possessed a firearm in furtherance of the drug trafficking crime charged in Count One.

The government does not have to prove all of these for you to return a guilty verdict on Count Seven. Proof beyond a reasonable doubt on one is enough. 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 carried a firearm during and in relation to the drug trafficking crime charged in Count One; or all of you must agree beyond a reasonable doubt that the defendant knowingly used a firearm during and in relation to the drug trafficking crime charged in Count One; or 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.

**COUNT EIGHT:**

**FELON IN POSSESSION OF A FIREARM**

**ESSENTIAL ELEMENTS OF THE OFFENSE**

The defendant is charged in Count Eight with violating Title 18 of the United States Code, Section 922(g)(1), which prohibits an individual convicted of a crime that is punishable by imprisonment for a term exceeding one year from knowingly possessing a firearm. The government must prove each of the following elements beyond a reasonable doubt:

First: The defendant knowingly possessed the firearm described in the indictment;

Second: Prior to the defendant possessing the firearm, he had been convicted, in any court, of a crime punishable by imprisonment for a term exceeding one year,

as charged;

Third: At the time the defendant possessed the firearm, he knew that he had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; and

Fourth: The possession charged was in or affecting interstate or foreign commerce.

### **KNOWING POSSESSION OF A FIREARM**

The first element that 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 that will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

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

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

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.

### **DEFENDANT’S PRIOR CONVICTION**

The second element the government must prove beyond a reasonable doubt is that

prior to 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 that the defendant was convicted of a crime and that this crime was punishable by imprisonment for a term exceeding one year. It has also been stipulated that this felony conviction occurred prior to the time that the defendant is alleged to have possessed the firearm. You must still consider whether the government has proven this element beyond a reasonable doubt.

I instruct you that the prior conviction that is an element of the charge here and which is not disputed is only to be considered by you for that fact and for nothing else. You are not to consider it for any other purpose or speculate regarding the type of conviction.

**DEFENDANT'S KNOWLEDGE OF PRIOR CONVICTION**

The government must also prove beyond a reasonable doubt that, at the time the defendant possessed the firearm, he knew that he had been convicted of a crime punishable by imprisonment for more than one year.

The parties have stipulated that the defendant knew he had been convicted of a crime punishable by imprisonment for a term exceeding one year. It has also been stipulated that the defendant knew during the time that the defendant is alleged to have possessed the firearm. You must still consider whether the government has proven this element beyond a reasonable doubt.

However, the government is not required to prove that the defendant knew that he was prohibited from possessing a firearm. It is enough if the government establishes beyond a reasonable doubt that the defendant knew he had been convicted of a crime with a potential penalty of imprisonment of more than one year.

**FIREARM IN OR AFFECTING INTERSTATE COMMERCE**

The fourth 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 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.

### **UNANIMOUS VERDICT REQUIRED**

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

### **JUROR NOTE-TAKING**

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

### **RECOLLECTION OF EVIDENCE**

Let me remind you that in deliberating upon your verdict, you are to rely solely and entirely upon your own memory of the testimony.

If, during your deliberations, you are unable to recall with any degree of accuracy a particular part of the testimony, or a part of these instructions, you may do the following:

- (1) Write out your question, and have the foreperson sign it;
- (2) Knock on the door of the jury room; and

(3) Deliver your note to the Court Officer to give to me.

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

### **CONCLUSION**

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

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

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

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. If a vote is to be taken, your foreperson will ensure that it is done. A verdict form has been prepared for your conclusions. 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 parties 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 17<sup>th</sup> day of April, 2024.

A handwritten signature in black ink, appearing to read 'Christina Reiss', written over a horizontal line.

Christina Reiss, District Judge  
United States District Court