UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 2:19-CR-157
	:	
CARL MARTIN	:	
Defendant.	:	

JURY CHARGE

Members of the Jury:

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

This case is a criminal prosecution brought by the United States against the Defendant, Carl Martin. The First Superseding Indictment charges Mr. Martin on six counts. You will receive a copy of the Indictment to take with you into the jury room.

Count One of the Indictment alleges that Carl Martin knowingly and willfully conspired together and with others, known and unknown to the grand jury, to distribute cocaine, a schedule II-controlled substance from in or about fall 2018 to on or about October 23, 2019. Count Two alleges that Carl Martin knowingly possessed a firearm on October 23, 2019, in

furtherance of a drug trafficking crime: the distribution of cocaine, as charged in Count Six. Counts Three through Six allege that Carl Martin knowingly and intentionally distributed cocaine, a schedule II-controlled substance on or about August 26, 2019, on or about September 5, 2019, on or about September 20, 2019, and on or about October 23, 2019.

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

ROLE OF INDICTMENT

At this time, I would like to remind you of the function of a grand jury indictment. An indictment is merely a formal way to accuse a defendant of a crime preliminary to 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 nature of the charges against Mr. Martin

Mr. Martin has pled not guilty to the six counts in the First Superseding Indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact that have been raised by the allegations within the Indictment and the denial made by the not guilty plea of Mr. Martin. You are to perform this duty without bias or prejudice against Mr. Martin or the prosecution.

PRESUMPTION OF INNOCENCE, REASONABLE DOUBT AND BURDEN OF PROOF

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

The question naturally is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not a caprice or whim; it is not a speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy. Under your oath as jurors you are not to be swayed by sympathy; you are to be guided solely by the evidence in this case. Reasonable doubt may arise from a lack of evidence.

In a criminal case, the burden is upon the government to

prove guilt beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to the defendant, which means that it is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government. For each offense charged in the indictment, if after fair and impartial consideration of all the evidence you have a reasonable doubt, you must find the defendant not guilty of that offense. If you view the evidence in the case as reasonably permitting either of two conclusions—one of innocence, the other of guilt—you must find the defendant not guilty. If, however, after fair and impartial consideration of all the evidence you are satisfied of the defendant's guilt of that offense beyond a reasonable doubt, you should vote to convict.

EVIDENCE

You have seen and heard the evidence presented during 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 admitted into evidence,

and all the facts 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 which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something she or he knows by virtue of their own senses—something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is the exhibit's existence or condition.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. Circumstantial evidence refers to inferring from one established fact, the existence or non-existence of some other fact, on the basis of reason, experience, and common sense. Circumstantial evidence is of no less value than direct evidence. The law makes no distinction between direct evidence and circumstantial evidence but requires that your verdict be based on all the evidence presented.

You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of Carl Martin beyond a reasonable doubt, you must find him not guilty.

The evidence that you will consider in reaching your verdict consists, as I have said, only of the sworn testimony of

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

STIPULATION OF FACTS

When the attorneys on both sides stipulate or agree as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proven.

STRICKEN TESTIMONY AND ARGUMENTS EXCLUDED

I caution you that you should entirely disregard any testimony that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. The evidence that you will consider in reaching your verdict consists only of

the sworn testimony of witnesses, the stipulations made by the parties, and all exhibits admitted into evidence.

Over the course of the trial, I occasionally asked questions of a witness in order to bring out facts not fully covered in his or her testimony. Do not assume that I hold any opinion on matters related to my questions.

OBJECTIONS

Over the course of the trial, I have ruled on objections made by the attorneys. These objections and my subsequent rulings are legal issues for the Court to decide and are not for your concern or consideration. It is the duty and job of the attorneys to make objections and you should not hold it against either side.

ARGUMENTS AND STATEMENTS BY THE ATTORNEYS

The opening and closing statements, questions, and other remarks made by attorneys during the trial are not evidence. You should consider witness testimony and the exhibits in making your decisions about the facts in this case. Attorney statements and arguments reflect an effort to organize and describe the evidence for you. You should consider their arguments carefully. In the end, however, it is the evidence admitted at trial which must govern your decision-making.

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

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony.

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

In this case you have heard testimony from a number of witnesses. I am now going to give you some guidelines for your determinations regarding the testimony of the various types of witnesses presented in this case.

INTEREST IN OUTCOME

As a general matter, in evaluating the credibility of each witness, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

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

EXPERT WITNESSES

You have heard the testimony of expert witnesses in this case. An expert witness is permitted to express his or her opinion on those matters about which he or she has special knowledge, skill, experience, or training. Such testimony is presented to you on the theory that someone who is experienced or knowledgeable in a field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing an expert's testimony, you may consider his or her qualifications, opinions, and reasons for testifying, as well as all the other considerations that apply when assessing a witness's credibility. You may give the expert's testimony whatever weight, if any, you find it deserves in light of the evidence in the case. You should not, however, accept the expert's testimony merely because he or she is an expert. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case, as I have said, rests solely with you.

LAW ENFORCEMENT WITNESSES

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

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case. It is your decision, after reviewing all the evidence, whether to accept the testimony of law enforcement officials, and to give to that testimony whatever weight, if any, you find it deserves.

ACCOMPLICES CALLED BY THE GOVERNMENT

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

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

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

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

GOVERNMENT INFORMERS

There has been evidence introduced at trial that the government used an informer in this case. I instruct you that there is nothing improper in the government's use of informers and, indeed, certain criminal conduct would never be detected without the use of informers. You, therefore, should not concern yourselves with how you personally feel about the use of informers. Your concern is to decide whether the government has proved the guilt of the defendant beyond a reasonable doubt, regardless of whether evidence was obtained by the use of an informer.

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

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

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

USE OF DRUGS BY CERTAIN WITNESSES

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

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

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

GOVERNMENT WITNESS - NOT PROPER TO CONSIDER GUILTY PLEA

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

CO-OPERATING WITNESS PLEA AGREEMENT

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

The government is permitted to enter into this kind of plea agreement. You, in turn, may accept the testimony of such a witness and convict the defendant on the basis of this testimony

alone, if it convinces you of the defendant's guilt beyond a reasonable doubt.

However, you should bear in mind that a witness who has entered into such an agreement has an interest in this case different than an ordinary witness. A witness who realizes that he or she may be able to obtain his or her own freedom or receive a shorter 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.

IMPEACHMENT OF A WITNESS

A witness may be discredited or "impeached" by contradictory evidence, by a showing that the witness testified falsely concerning a matter, or by evidence that at some other time the witness said or did something inconsistent with the witness's present testimony. It is your job to give the testimony of each witness the credibility or weight that you think it deserves.

RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE

You may not consider any personal feelings you may have about the race, religion, national origin, sex, or age of Mr. Martin or any of the witnesses in your deliberations over the verdict or in the weight given to any evidence.

GOVERNMENT AS A PARTY

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

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

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

DEFENDANT NOT TESTIFYING

You may have observed that Mr. Martin did not testify in this case. Mr. Martin has a constitutional right not to do so. He does not have to testify, and the government may not call him as a witness. Mr. Martin's decision not to testify raises no

presumption of guilt and does not permit you to draw any unfavorable inference. Therefore, in determining whether or not the government has proved Mr. Martin's guilt beyond a reasonable doubt, you are not to consider, in any manner, the fact that he did not testify. Do not even discuss it in your deliberations.

ADMISSIONS BY A DEFENDANT

There has been evidence Mr. Martin made certain statements in which the government claims he admitted certain facts.

In deciding what weight to give Mr. Martin's statements, you should first examine with great care whether each statement was made and whether, in fact, it was voluntarily and understandingly made. I instruct you that you are to give the statements such weight as you feel they deserve in light of all the evidence.

OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT

As part of the government's case, you heard testimony and have seen evidence that Mr. Martin engaged in other acts that are otherwise unrelated to the charges in the Indictment. This evidence of these other acts was admitted only for a limited purpose. You may consider this evidence only for the purpose of deciding whether Mr. Martin was predisposed to committing the substantive charges for which he is on trial. Do not consider this evidence for any other purpose.

Of course, it is for you to determine whether you believe this evidence and, if you do believe it, whether you accept it for the purpose offered. You may give it such weight as you feel it deserves, but only for the limited purpose that I described to you.

Mr. Martin is not on trial for committing these other acts. You may not consider the evidence of these other acts as a substitute for proof that he committed the crimes charged. If you find that the government has failed to prove the primary charges beyond reasonable doubt, do not consider these other acts in any other way.

PUNISHMENT

The punishment provided by law for the offenses charged in the First Superseding Indictment is a matter exclusively within the province of the Court, and should never be considered by the jury, in any way, in arriving at an impartial verdict as to the guilt or innocence of Mr. Martin.

USE OF RECORDINGS AND TRANSCRIPTS

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

consider the method of gathering this evidence in your deliberations.

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

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

Having explained the general guidelines by which you will evaluate the evidence, I will now instruct you with regard to the law that is applicable to your determinations in this case. It is your duty as jurors to follow the law as stated to you in these instructions and to apply the rules of law to the facts that you find from the evidence. You will not be faithful to your oath as jurors if you find a verdict that is contrary to the law that I give to you.

However, it is the sole province of the jury to determine the facts in this case. I do not, by any instructions given to

you, intend to persuade you in any way as to any question of fact.

The parties in this case have a right to expect that you will carefully and impartially consider all the evidence in the case, that you will follow the law as I state it to you, and that you will reach a just verdict.

MULTIPLE COUNTS

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

"ON OR ABOUT" EXPLAINED

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

COUNT I: CONSPIRACY TO DISTRIBUTE COCAINE

Count I of the First Superseding Indictment charges that Carl Martin engaged in a conspiracy with others to distribute cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. §§846, 841(a)(1) and 841(b)(1)(C). Title 21, United States Code, Section 846, as charged in Count One, makes it a

separate federal crime or offense for anyone to conspire or agree with someone else to do something, which, if actually carried out, would be a violation of Section 841(a)(1). Section 841(a)(1) makes it a crime for anyone to knowingly or intentionally distribute a controlled substance. I instruct you that cocaine is a controlled substance.

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

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

In order to find Mr. Martin guilty of Count One, you must find that the government has proven beyond a reasonable doubt

the following essential elements of the charge. That at the time and places alleged in the indictment:

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

(2) that Mr. Martin knowingly and willfully became a member of such conspiracy.

ELEMENT ONE: EXISTENCE OF AGREEMENT

The first element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that two or more person entered the unlawful agreement charged in the indictment.

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

You may of course, find that the existence of an agreement to disobey or disregard the law has been established by direct

proof. However, since conspiracy is, by its very nature, characterized by secrecy, you may also infer its existence from the circumstances of this case and the conduct of the parties involved.

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

ELEMENT TWO: MEMBERSHIP IN THE CONSPIRACY

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

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

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

As I mentioned, before Mr. Martin 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 he joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement.

Mr. Martin'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, Mr. Martin need not have known the identities of each and every other member, nor need he have been aware of all of their activities. Moreover, Mr. Martin need not have been fully informed as to all of the details or scope of the conspiracy in order to justify an inference of knowledge on his part. Furthermore, Mr. Matin need not have joined in all of the conspiracy's unlawful acts or objectives or participated in it for the full time period alleged in the indictment.

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

A conspiracy may continue for a long period of time and may include the performance of many transactions. It is not necessary that all members of the conspiracy join it at the same time, and one may become a member of a conspiracy without full knowledge of all the details of the unlawful scheme or the names, identities, or locations of all of the other members. So, if a defendant has an understanding of the unlawful nature of a plan and knowingly joins in that plan on one occasion, that is sufficient to convict him for conspiracy even though he had not participated before and even though he played a minor part.

I 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 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.

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

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

"KNOWINGLY" AND "WILLFULLY" DEFINED

You have been instructed that to sustain its burden of proof on Count One, the government must prove that Mr. Martin

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 Mr. Martin's words, acts or omissions, along with all other evidence, in deciding whether he acted knowingly.

Willfully means to act with knowledge that one's conduct is unlawful and with the intent to do something that the law forbids, that is to say with bad purpose to disobey or to disregard the law. Mr. Martin's conduct was not willful if it was due to negligence, inadvertence or mistake.

COUNT TWO: KNOWING POSSESSION OF A FIREARM IN FURTHERANCE OF A DRUG TRAFICKING CRIME

You will recall that in Count Two of the Indictment, Carl Martin is charged with knowingly possessing a firearm in furtherance of a drug trafficking crime for which he may be prosecuted in a court of the United States. The underlying drug trafficking crime alleged is the distribution of cocaine, the offense charged in Count Six.

The relevant statute on this subject is Title 18, United States Code section 924(c). If upon consideration of all of the evidence you find that the government has failed to prove Count Six beyond a reasonable doubt, then you will proceed no further. Count Two is to be considered only if you first find Mr. Martin guilty under Count Six as charged.

In reaching your verdict on Count Two, you may consider the evidence of Count Six only for the purpose of determining whether the elements of Count Six have been satisfied.

The government must prove each of the following elements beyond a reasonable doubt to sustain its burden of proving Mr. Martin guilty: First, that Mr. Martin committed a drug trafficking crime for which he might be prosecuted in a court of the United States. Second, that Mr. Martin knowingly possessed a firearm in furtherance of the crime charged in Count ~~One~~ SIX.

ELEMENT ONE: COMISSION OF THE PREDICATE CRIME

The first element the government must prove beyond a reasonable doubt is that Mr. Martin committed a drug trafficking crime for which he might be prosecuted in a court of the United States.

Mr. Martin is charged in Count Six of the Indictment with committing the crime of distributing cocaine. I instruct you that the crime of distributing cocaine is a drug trafficking crime. However, it is for you to determine that the government has proven beyond a reasonable doubt that Mr. Martin committed the crime of knowingly and intentionally distributing cocaine as charged.

ELEMENT TWO: KNOWING POSSESSION OF A FIREARM IN FURTHERANCE OF THE ~~COMMITMENT~~ COMMISSION OF THE PREDICATE CRIME

The second element the government must prove beyond a reasonable doubt is that Mr. Martin knowingly possessed a firearm in furtherance of the commission of the crime charged in Count Six. 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. The term also includes the frame or receiver of any such weapon. To prove that Carl Martin possessed the firearm in furtherance of the crime, the government must prove that he had possession of the firearm and that such possession was in furtherance of that crime. Possession means that a defendant either had physical possession of the firearm on his person or that he constructively possessed the firearm, meaning 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 Mr. Martin possessed the firearm knowingly. This

means that he possessed the firearm purposely and voluntarily, and not by accident or mistake. It also means that he knew that the weapon was a firearm, as we commonly use the word. However, the government is not required to prove that Mr. Martin knew that he was breaking the law.

COUNTS THREE, FOUR, FIVE, AND SIX: DISTRIBUTION OF A CONTROLLED SUBSTANCE

As you will recall, in Counts Three, Four, Five, and Six of the Indictment, Carl Martin is charged 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.

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 Mr. Martin knowingly and intentionally distributed a controlled substance, as charged in the Indictment, and;

Second, that at the time of the distribution, Mr. Martin knew that the substance distributed was a controlled substance. I instruct you again that cocaine, as charged in the Indictment, is a Schedule II controlled substance.

DEFINITION OF DISTRIBUTION

The word "distribute" means to deliver a controlled substance. "Deliver" is defined as the actual, constructive, or attempted transfer of a controlled substance. Simply stated, the words distribute and deliver mean to pass on, or to hand over to another, or to cause 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 vouching for the quality of the drugs, negotiating for or receiving the price, and supplying and delivering the drugs may constitute distribution.

In short, distribution requires a concrete involvement in the transfer of drugs.

"KNOWINGLY" AND "INTENTIONALLY" DEFINED

With respect to Counts Three, Four, Five, and Six of the Indictment, you have been instructed that in order to sustain its burden of proof, the government must prove that Mr. Martin 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 Mr. Martin's words, acts, or omissions, along with all other evidence, in deciding whether he 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 Mr. Martin knew that he possessed a controlled substance, the government does not have to prove he knew the exact nature of the substance he possessed. It is enough that the government proves that Mr. Martin knew that he possessed some kind of controlled substance. Your decision about whether Mr. Martin knew the materials he distributed were a controlled substance involves a decision about his state of mind. It is obviously impossible to prove directly the operation of Mr. Martin'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 Mr. Martin's state of mind was. You may rely on circumstantial evidence in determining his state of mind.

AIDING AND ABETTING

Alternatively, the Indictment charges Carl Martin in Counts Three, Four, Five, and Six with violating section 2 of Title 18 of the United States Code, which makes it a crime to "aid or abet" the commission of an offense against the United States. Specifically, Carl Martin is charged with aiding and abetting the distribution of cocaine as charged in these Counts. The

aiding and abetting statute, section 2(a) of Title 18 of the United States Code provides that:

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

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

Accordingly, you may find Mr. Martin guilty of the offense charged if you find beyond a reasonable doubt that another person actually committed the offense with which Mr. Martin is charged, and that Mr. Martin 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 Mr. Martin aided or abetted the commission of that crime.

In order to aid or abet another to commit a crime, it is necessary that a 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 Mr. Martin knowingly associated himself with the crime, the government must establish that he knew that another person knowingly and intentionally distributed cocaine.

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

The mere presence of a defendant where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or merely associating with others who were committing a crime is not sufficient to establish aiding and abetting. One who has no knowledge that a crime is being committed or is about to be committed but inadvertently does something that aids in the commission of that crime is not an aider and abettor. An aider and abettor must know that the crime is being committed and act in a way which is intended to bring about the success of the criminal venture.

To determine whether Mr. Martin 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 Mr. Martin 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 Mr. Martin is not an aider and abettor, and you must find him not guilty.

ENTRAPMENT DEFENSE

Defendant Carl Martin asserts as a defense that he was the victim of entrapment by an agent of the government. While the law permits government agents to trap an unwary criminally minded person, the law does not permit government agents to entrap an unwary innocent. Thus, a defendant may not be convicted of a crime if it was the government who gave the defendant the idea to commit the crime, if it was the government who also persuaded him to commit the crime, and if he was not ready and willing to commit the crime *before* the government officials or agents first spoke with him.

On the other hand, if a defendant was ready and willing to commit the offenses charged against him in the indictment, and the government merely presented him with an opportunity to do so, that would not constitute entrapment. The entrapment defense must be considered independently as to each count

charged and the jury must render a verdict regarding entrapment for each and every count charged.

Your inquiry on this issue should first be to determine if Mr. Martin was induced by the government agent to commit the offense in question, and specifically if there is some credible evidence that a government agent took the first step that led to a criminal act. Inducement is defined as soliciting, proposing, initiating, broaching, or suggesting that Mr. Martin commit each of the crimes charged. If you find there was no such evidence, there can be no entrapment and your inquiry on this defense should end there.

If, on the other hand, you find some credible evidence that a government agent initiated the criminal acts charged in the indictment, the burden then moves to the government to prove beyond a reasonable doubt that Mr. Martin was not entrapped. Specifically, you must decide if the government has satisfied its burden to prove beyond a reasonable doubt that prior to first being approached by the government agents, Mr. Martin was ready and willing to commit the crime. If you find beyond a reasonable doubt that Mr. Martin was predisposed, that he was ready and willing to commit the offenses charged, and merely was awaiting a favorable opportunity to commit them, then you should find that Mr. Martin was not the victim of entrapment. On the other hand, if you have a reasonable doubt that Mr. Martin would

have committed the offenses charged without the government's inducements, you must acquit Mr. Martin.

In determining this question of predisposition or willingness, you may consider evidence of the prior conduct of Mr. Martin including his criminal record, if any. You may consider such evidence, however, solely in connection with your determination of his predisposition or readiness to commit the offense with which he is charged.

You may not consider this evidence as proof that he actually committed the offense with which he is charged, and you are free to find that he was not predisposed to commit the crime even if he had previously committed similar offenses.

The question of predisposition is an issue of fact for you to determine based on all of the evidence.

CONCLUSION

I caution you, members of the jury, that you are here to determine whether the government has proven Mr. Martin's guilt beyond a reasonable doubt. I remind you that the mere fact that Mr. Martin has been indicted is not evidence against him. Also, Mr. Martin is not on trial for any act or conduct or offense not alleged in the Indictment. Nor are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

You should know that the punishment provided by law for the

offenses charged in the Indictment is a matter exclusively within the province of the judge and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

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

To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous. The government has alleged that Mr. Martin engaged in a conspiracy to distribute cocaine, that he knowingly possessed a firearm in furtherance of a drug trafficking crime, and that he distributed a controlled substance on four occasions. In order to find Mr. Martin guilty of any of the charged offenses, you must find that the government has proven every element of the offense beyond a reasonable doubt and that conclusion must be unanimous. You must do this for each Count charged.

At this time, I would like to offer my sincere thanks to the alternates.

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience. If you are able to reach an agreement as to the Counts contained in the Indictment, you will have your foreperson record a verdict of guilty or not guilty. Your foreperson will then sign and date the verdict form and you will then return to the courtroom.

If, during your deliberations you should desire to communicate with the Court, please put your message or question in writing signed by the foreperson and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can speak with you. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

You have been permitted to take notes during the trial for use in your deliberations. You may take these notes with you when you retire to deliberate. They may be used to assist your recollection of the evidence, but your memory, as jurors, controls. Your notes are not evidence and should not take precedence over your independent recollections of the evidence. The notes that you took are strictly confidential. Do not

disclose your notes to anyone other than the other jurors. Your notes should remain in the jury room and will be collected at the end of the case.

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

I appoint _____ as your foreperson.

Dated at Burlington, in the District of Vermont, this 10th day of June, 2022.

/s/ William K. Sessions III
William K. Sessions III
District Court Judge