

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA :
 :
 v. : Case No. 1:12-cr-85
 :
 ROYAN WINT, :
 :
 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 as jurors to accept these instructions of law and apply them to the facts as you determine them from the evidence in the case. Nothing I say in these instructions is an indication that I have any opinion about the facts of the case. It is not my function to determine the facts, but rather yours.

This case is a criminal prosecution brought by the United States against the defendant, Royan Wint. The Second Superseding Indictment charges one count of willfully and knowingly conspiring with others to distribute and possess with intent to distribute cocaine base, cocaine, and oxycodone, each a controlled substance, in violation of 21 U.S.C. §§ 846, 841(a) (1), 841(b) (1) (B), and one count of knowingly and intentionally possessing with intent to distribute cocaine base, cocaine, and oxycodone, each a controlled substance, in violation of 21 U.S.C. §§ 841(a) (1), 841(b) (1) (B), 18 U.S.C. § 2.

All parties expect that you will carefully and impartially consider all of the evidence, follow the law, and reach a just verdict, regardless of the consequences.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cellphone, smartphone, iPhone, Blackberry or computer, the internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence

you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

Role of Indictment

At this time, I would like to remind you of the function of an indictment. An indictment is merely a formal way to accuse a defendant of a crime preliminary to trial. An indictment is not evidence. The Second Superseding 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 the defendant. The defendant has pleaded "not guilty" to the counts in the Second 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 of the indictment and the defendant's denial of guilt by his "not guilty" plea. You are to perform this duty without bias or prejudice against the defendant or the prosecution.

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. 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 whim, speculation, or suspicion. However, 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 on the government to prove guilt beyond a reasonable doubt. The law does not require the government to prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to a defendant, which means that it is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A

defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

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

The law presumes that a 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 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 you the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses and any exhibits that have been admitted into evidence. Statements and arguments of counsel are not evidence in the case. Any evidence to which an objection was sustained by the Court must be disregarded. I would now like to call to your attention certain guidelines by which you are to evaluate the evidence.

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

The second type, circumstantial evidence, is evidence which tends to prove a disputed fact by proof of other facts. You infer on the basis of reason and 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, you must find him not guilty.

The arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. By the rulings the Court made in the course of the trial, I did not intend to indicate to you any of my own preferences, or to influence you in any manner regarding how you should decide the case. The attorneys have a duty to object to evidence they believe is not admissible. You must not hold it against either side if an attorney made an objection.

Anything you have seen or heard outside the courtroom is not evidence, and must be entirely disregarded. 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.

Admissions by Defendant

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

In deciding what weight to give the defendant'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.

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 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. 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.

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.

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.

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.

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

Accomplices and Immunized Witnesses

You have heard witnesses who testified that they were accomplices, that is, they said they participated with the defendant in the commission of a crime. The testimony of accomplices must be examined and weighed by the jury with greater care than the testimony of a witness who did not claim to have participated in the commission of that crime.

This is also true of other witnesses who have received immunity. A witness receives immunity from the government when that witness is told his or her crimes will go unpunished in exchange for testimony, or that his or her testimony will not be used against him or her. A witness who has entered into such an agreement has an interest in the case different from any ordinary witness. A witness who realizes that he or she may be able to obtain his or her own freedom, or receive a lighter sentence by giving testimony favorable to the government has a motive to testify falsely. Therefore, you must examine his or her testimony with caution and weigh it with great care. You must determine whether the testimony of the accomplice has been affected by self-interest, or by an agreement he or she may have with the government, or by his or her own interest in the outcome of this case, or by any prejudice he or she may have against the defendant.

You should consider whether they have an interest in the case and whether they have a motive to testify falsely. In other

words, ask yourselves whether they have a stake in the outcome of this trial. As I have indicated, their testimony may be accepted by you if you believe it to be true and it is up to you, the jury, to decide what weight, if any, to give to the testimony of accomplices and immunized witnesses.

Witness's Guilty Plea or Plea Agreement

You have heard testimony from a government witness who pled guilty to charges arising out of the same facts as this case. You are instructed that you are to draw no 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 or offenses. That witness's decision to plead guilty was a personal decision about her own guilt. It may not be used by you in any way as evidence against or unfavorable to the defendant on trial here.

There has also been testimony from a government witness who pled guilty after entering into an agreement with the government to testify. The government also promised to bring the witness's cooperation to the attention of the sentencing court. The government is permitted to enter this kind of plea agreement. You should bear in mind that a witness who has entered into such an agreement has an interest in this case different from an ordinary witness. A witness who realizes that he or she may be able to obtain his or her own freedom, or receive a lighter sentence by giving testimony favorable to the government, may have a motive to testify falsely. Conversely, a witness who realizes that he or she may benefit by providing truthful testimony may have a motive to be honest. Therefore, you must examine his or her testimony with caution and weigh it with great care. After scrutinizing his or her testimony, you may decide to

accept it, reject it, accept it in part, or reject it in part,
and you may give it whatever weight, if any, you find it
deserves.

Prior Inconsistent Statements of a Witness

There has been evidence that a witness who testified at this trial may have lied under oath. I must warn you that the testimony of this witness should be viewed cautiously and weighed with great care. It is, however, for you to decide how much of this testimony, if any, you wish to believe.

You may find that a witness has made statements outside of this trial that are inconsistent with the statements that the witness gave here. You may consider the out-of-court statements not made under oath only to determine the credibility of the witness and not as evidence of any facts contained in the statements. As to out-of-court statements that were made under oath, such as statements made in prior testimony, you may consider them for all purposes, including for the truth of the facts contained therein.

Use of Drugs by A Witness

There has been evidence introduced at the trial that some of the individuals the government called as witnesses were using drugs when the events they observed took place. 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. You must consider the effect, if any, the drugs may have on the witness's ability to perceive and recall 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.

Race, Religion, National Origin, Sex or Age

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

Bias, Prejudice, Equality Before the Court

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

This case is important to the parties and the Court. The case is important to the government, for the enforcement of criminal laws is one of the government's duties. Equally, this case is important to the defendant, who is charged with serious crimes. You must give it the fair and serious consideration which it deserves.

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

Defendant Not Testifying

The defendant did not testify in this case. A defendant has a constitutional right not to do so. He does not have to testify, and the government may not call him as a witness. A defendant's decision not to testify raises no presumption of guilt and does not permit you to draw any unfavorable inference. Therefore, in determining whether the defendant is guilty or not guilty of the crimes charged, you are not to consider, in any manner, the fact that he did not testify. Do not even discuss it in your deliberations.

Consider Each Count Separately

A separate crime or offense is charged in each count of the Second Superseding Indictment. Each charge against the defendant, and any evidence pertaining to it, should be considered separately. The fact that you find the defendant guilty or not guilty of one of the charged offenses should not control your verdict as to the other charged offense against the defendant.

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.

Copies of these instructions will go with you into the jury room for your use.

The Essential Elements of the Charge: Count 1

You will recall Count 1 of the Second Superseding Indictment charges Royan Wint with knowingly and willfully conspiring to distribute cocaine, oxycodone, and 28 grams or more of cocaine base, all Schedule II controlled substances, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B). I instruct you that cocaine, oxycodone, and cocaine base are all Schedule II controlled substances.

Section 846 of title 21 of the United States Code, as charged in Count 1, 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, or possess with intent to distribute, a controlled substance.

Under the law, a "conspiracy" is an agreement or a combination of two or more persons who join together to accomplish some unlawful purpose. The object of the conspiracy alleged is the distribution of cocaine, cocaine base and oxycodone.

In order 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.

To find the defendant guilty of Count 1, you must find that the government has proved beyond a reasonable doubt the following essential elements of the charge alleged in the Second Superseding Indictment:

(1) Between January 2012 and May 22, 2012, two or more persons entered into an agreement to distribute cocaine, cocaine base, and/or oxycodone; and

(2) Mr. Wint knowingly and willfully became a member of the conspiracy; and

(3) Mr. Wint knew the purpose of the conspiracy.

Existence of An Agreement

The government must prove beyond a reasonable doubt that two or more persons entered into the unlawful agreement charged in Count 1 of the Second Superseding Indictment.

In order for the government to satisfy this element, it must prove 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 need not find that the alleged members of the conspiracy actually met and entered into any express or formal agreement. You need not find that the alleged members stated in words or writing what the object or purpose of the conspiracy was, or every precise detail of the scheme. The agreement may only consist of a mutual understanding that the members would commit some illegal activity by means of a common plan or course of action, as alleged in the Second Superseding Indictment.

There may or may not be direct proof of the agreement. However, because a conspiracy is sometimes characterized by secrecy, you may or may not infer its existence from the circumstances and the conduct of the parties involved. You may therefore consider the actions and statements of all those you find to be participants as proof that a common design existed for acting together to accomplish an unlawful purpose. Acts that may seem innocent when taken individually may indicate guilt when

viewed collectively and with reference to the circumstances in general.

Co-conspirators need not be charged with the crime of conspiracy in order for you to find that the defendant had an agreement with other individuals to commit the illegal act charged in the Second Superseding Indictment.

Membership in the Conspiracy

The government must also prove beyond a reasonable doubt that the defendant knowingly and willfully became a member of the conspiracy.

If you are satisfied that the conspiracy charged in the Second Superseding Indictment existed, you must next ask yourselves who the members of that conspiracy were. In order to make this determination, you must decide whether a defendant knowingly and willfully joined the conspiracy with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective.

You must find that the defendant joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement, and with the intent of aiding in the accomplishment of those ends, in order to satisfy the knowledge and intent element of the conspiracy charge. Count 1 of the Second Superseding Indictment charges that the conspirators unlawfully agreed to distribute, and to possess with intent to distribute, controlled substances, specifically cocaine, oxycodone, and cocaine base. The government need not prove beyond a reasonable doubt that defendant agreed to accomplish both the distribution and the possession with intent to distribute cocaine, oxycodone, and cocaine base. Proof beyond a reasonable doubt that defendant agreed to participate in a conspiracy with an object of distributing, or possessing with

intent to distribute, any one of these three controlled substances is sufficient to find that defendant participated in the unlawful agreement alleged in Count 1.

The extent of a defendant's participation has no bearing on his guilt. A conspirator's guilt 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 roles in the scheme. The law does not require that each participant in the conspiracy play an equal role.

If the evidence establishes beyond a reasonable doubt that a defendant knowingly and willfully entered into an agreement to commit the substantive offense charged in the indictment, the fact that the defendant did not join the agreement at its beginning, did not know all of the details of the agreement, did not participate in each act of the agreement, or did not play a major role in accomplishing the unlawful goal, is not important to your decision regarding membership in the conspiracy.

However, mere association with others, mere presence at the place where a crime takes place or is discussed--or knowing about criminal conduct--does not, in and of itself, make someone a member of the conspiracy. Also, proof that a 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, though, are factors

that you may consider among others to determine whether a defendant was a member of the conspiracy.

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

Definition of Distribution

The word "distribute" means to deliver a narcotic.

"Deliver" is defined as the actual, constructive, or attempted transfer of a narcotic. 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, narcotics.

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.

Definitions of Knowingly and Willfully

You have been instructed that in order to sustain its burden of proof on Count 1, the government must prove the defendant acted knowingly and willfully. A person acts knowingly if that person acts intentionally and with knowledge, and not because of ignorance or carelessness.

To act willfully means to do an act on purpose, and not inadvertently or by mistake or accident.

Whether the defendant acted knowingly or willfully may be proven by the defendant's conduct and by all the facts and circumstances surrounding this case.

Count 2: Elements of the Offense of Possession
with Intent to Distribute a Controlled Substance

Defendant is charged in Count 2 with possession with the intent to distribute cocaine, oxycodone, 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:

(1) Mr. Wint knowingly or intentionally possessed a controlled substance, as charged in Count 2 of the Second Superseding Indictment; and

(2) Mr. Wint, at the time of the possession, knew the substance was a controlled substance; and

(3) Mr. Wint, at the time of the possession, intended that he or others would distribute the controlled substance.

I instruct you that cocaine, oxycodone, and cocaine base are controlled substances.

Definition of Possession

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. A person who, although not in actual possession, knowingly has dominion and control over the place where a thing is located and has the power and intention to exercise control over that thing, is in constructive possession of it.

The law recognizes also that "possession" may be sole or joint. If one person alone has actual or constructive possession of a thing, then possession is sole. If two or more persons share actual or constructive possession of a thing, then possession is joint.

You may find 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 a controlled substance, either alone or jointly with others.

Intent to Distribute

The third element the government must prove is that the defendant intended to distribute a controlled substance. To satisfy this element, the government must prove beyond a reasonable doubt that the defendant had control over the cocaine, cocaine base, or oxycodone with the state of mind or purpose to transfer them to another person.

The same considerations that apply to your determination of whether the defendant knew he possessed a controlled substance apply to your decision concerning his intention to distribute it. Since you cannot read his 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 he intended to distribute the cocaine, cocaine base, or oxycodone.

When I say that you must find that the defendant intended to distribute cocaine, cocaine base, or oxycodone, this does not mean that you must find that he intended personally to distribute or deliver it. It is sufficient if you find that he intended to cause or assist the distribution.

Basically, what you are determining is whether the drugs in the defendant's possession were for his personal use or for the purpose of distribution. Often it is possible to make this determination from the quantity of drugs found in a person's possession.

The possession of a large quantity of drugs does not necessarily mean that a person intended to distribute them. On the other hand, a person may have intended to distribute the drugs even if he or she did not possess large amounts of them. Other physical evidence, such as paraphernalia for the packaging or processing of drugs, can show an intent. There might also be evidence of a plan to distribute. You should make your decision as to whether the defendant intended to distribute the drugs in his possession from all of the evidence presented.

Definitions of Knowingly and Intentionally

With respect to Count 2, you have been instructed that, to sustain its burden of proof, the government must prove the defendant acted knowingly or intentionally. As I instructed you earlier, a person acts knowingly if that person acts intentionally and voluntarily, and not because of ignorance or carelessness.

A person acts intentionally if he acts deliberately and purposefully, and not because of mistake or accident.

Whether the defendant acted knowingly or intentionally may be proven by the defendant's conduct and by all the facts and circumstances surrounding this case.

"In or About" Explained

The Second Superseding Indictment in this case charges that the offenses were committed "in or about" certain dates.

Although it is necessary for the government to prove beyond a reasonable doubt that an offense was committed on a date reasonably near the date alleged in the indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

Amount of Drugs

With respect to each of Count 1 and Count 2, if you find that the government has not proven beyond a reasonable doubt the elements that I have described to you, you must find the defendant not guilty on the special verdict form I will provide you. You will then answer no further questions with regard to the defendant.

If you find that the government has proven beyond a reasonable doubt the elements that I have described to you, then there are more issues you must decide.

Counts 1 and 2 each charge the defendant with an offense that involves 28 grams or more of a mixture or substance containing a detectable amount of cocaine base.

With respect to the conspiracy charged in Count 1, you should assess the amount of cocaine base involved with regard to the defendant. The government does not have to prove that the defendant directly handled or distributed the particular quantity alleged, although you may consider that evidence along with other evidence to assess the quantity element. The government can prove the defendant responsible for the quantity involved in three ways. First, the government can offer evidence that proves beyond a reasonable doubt that the defendant personally and directly participated in the possession or distribution of the drugs in question. With regard to this type of proof, the government need not prove that the defendant knew the type or

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

With respect to the possession with intent to distribute charged in Count 2, the government can prove the defendant responsible for the quantity involved by offering evidence that proves beyond a reasonable doubt that the defendant personally and directly participated in the possession of the drugs in question. Once again, the government need not prove that the defendant knew the type or amount of drugs in question as long as the government proves beyond a reasonable doubt that the defendant knew the drugs in question were a controlled substance.

Remember, with respect to each offense, you should address the issue of quantity only if you find the government has proven beyond a reasonable doubt the essential elements of that offense.

Punishment

The punishment provided by law for the offenses charged 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 as to the guilt or innocence of the defendant.

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 the defendant has been indicted is not evidence against him. Also, the 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 in this case. You should not consider the consequences of a guilty or not guilty determination.

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.

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

I appoint _____ as your foreperson.

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 special verdict form has been prepared for your conclusions. After you have reached an agreement, the foreperson will record a verdict of guilty or not guilty as to the charges against the defendant. 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 security officer who will bring it to my attention. I will then confer with the attorneys and 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 reveal your numerical division, if any. You should also never communicate the subject matter of your note or your deliberations to any member of the Court staff.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA :
 :
 v. : Case No. 1:12-cr-85
 :
 ROYAN WINT, :
 :
 Defendant. :

SPECIAL VERDICT FORM

1. As to the charge of conspiring to distribute or possess with intent to distribute cocaine, oxycodone, or cocaine base, all Schedule II controlled substances, as alleged in Count 1 of the Second Superseding Indictment, we unanimously find Defendant Royan Wint:

Not Guilty ____ **Guilty** ____

If you answered "Not Guilty," please proceed to question 3.

If you answered "Guilty," please proceed to the following question:

2. Having found Defendant Wint participated in the charged conspiracy, what amount of a mixture or substance containing a detectable amount of cocaine base do you unanimously find Defendant Wint was directly involved with, knew was involved, or could reasonably foresee?

____ 28 grams or more

____ less than 28 grams

3. As to the charge of possession with the intent to distribute cocaine, oxycodone, or cocaine base, all Schedule II controlled substances, as alleged in Count 2 of the Second Superseding Indictment, we unanimously find Defendant Royan Wint:

Not Guilty ____ **Guilty** ____

If you answered "Not Guilty," please stop and report your verdict.

If you answered "Guilty," please proceed to the following question:

4. Having found Defendant Wint possessed with intent to distribute a controlled substance, what amount of a mixture or substance containing a detectable amount of cocaine base do you unanimously find Defendant Wint personally and directly participated in the possession of?

_____ 28 grams or more

_____ less than 28 grams

SO SAY WE ALL.

Signature of Foreperson

Date