IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	CR. NO. 97-20272
	)	
JERROLD TRESVANT,	)	
	)	
Defendant.	)	

Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished, you will go to the jury room and begin your discussions -- what we call your deliberations.

It will be your duty to decide whether the government has proved beyond a reasonable doubt the specific facts necessary to find the defendant guilty of the crimes charged in the indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial; and you must not be influenced in any way by either sympathy or prejudice for or against the defendant or the government.

You must also follow the law as I explain it to you whether you agree with that law or not; and you must follow all of my instructions as a whole. You may not single out, or disregard, any of the Court's instructions on the law.

The indictment or formal charge against the defendant is not evidence of guilt. Indeed, a defendant is presumed by the law to be innocent. The law does not require a defendant to prove his or her innocence or produce any evidence at all. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so you must find the defendant not guilty.

Reasonable
Doubt

Thus, while the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt.

A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

Evidence

As stated earlier, you must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses, the exhibits admitted in the record and any facts of which the court has taken judicial notice. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that a defendant is either guilty or not guilty. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Also you should not assume from anything I may have said or done that I have any opinion concerning any of the issues in this case. Except for my instructions to you, you should disregard anything I may have said in arriving at your own decision concerning the facts.

The defendant has been charged with five crimes. The number of charges is no evidence of guilt and should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on the other charge.

7.19
Judicial
Notice

You are instructed that the Court has taken judicial notice of the facts that:

1. Memphis, Tennessee is in the Western District of Tennessee.

Since you are the fact-finders in this case, you may, but are not required to, accept this fact as conclusively established.

Number of Witnesses
Credibility

Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling. You may decide that the testimony of a smaller number of witnesses concerning any fact in dispute is more believable than the testimony of a larger number of witnesses to the contrary.

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the person impress you as one who was telling the truth? Did he or she have any particular reason not to tell the truth? Did he or she have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did he or she appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony he or she gave before you during the trial.

The fact that a witness has been convicted of a felony offense is another factor you may consider in deciding whether you believe his or her testimony.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and that may depend on whether it has to do with an important fact or with only an unimportant detail.

A defendant has an absolute right not to testify. The fact that he did not testify cannot be considered by you in any way. Do not even discuss it in your deliberations.

Remember that it is up to the government to prove the defendant guilty beyond a reasonable doubt. It is not up to the defendant to prove that he is innocent.

Expert Testimony (7.03)

_____You have heard the testimony of Freida Saharovici, an expert witness. An expert witness has special knowledge or experience that allows the witness to give an opinion.

You do not have to accept an expert's opinion. In deciding how much weight to give it, you should consider the witness's qualifications and how she reached her conclusions.

Remember that you alone decide how much of a witness's testimony to believe, and how much weight it deserves.

You have heard the testimony of Raymond Burrow and Ryan Winston. You have also heard that before this trial they were convicted of a felony.

These earlier convictions were brought to your attention only as one way of helping you decide how believable their testimony was. Do not use it for any other purpose. It is not evidence of anything else.

Law Enforcement
Witnesses

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the federal, state, or local government as a law enforcement official does not mean that his 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 witnesses and to give to that testimony whatever weight, if any, you find it deserves.

When you heard the testimony of Raymond Burrow and Ryan Winston, you also heard that the government may make a 5K1.1 motion to allow the court to depart below the sentencing guidelines in their cases in consideration for their testimony against the defendant.

It is permissible for the government to make such a motion. But you should consider Raymond Burrow's testimony and Ryan Winston's testimony with more caution than the testimony of other witnesses. Consider whether their testimony may have been influenced by the government's possible motion.

Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

You have heard the testimony of Raymond Burrow. You have also heard that he was involved in the same crime that the defendant is charged with committing. You should consider Raymond Burrow's testimony with more caution than the testimony of other witnesses.

Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

The fact that Raymond Burrow has pleaded guilty to a crime is not evidence that the defendant is guilty, and you cannot consider this against the defendant in any way.

7.06A
Testimony of Informant

You have heard the testimony of Jerome Hayslett. You have also heard that he received consideration from the government in the form of assistance in another case in exchange for his cooperation as a confidential informant in this case.

The use of confidential informants is common and permissible. But you should consider the testimony of Mr. Hayslett with more caution than the testimony of other witnesses. Consider whether his testimony may have been influenced by what the government has agreed to do for him.

Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

Acts and Declarations
of Co-conspirators (28.06)D

_____Evidence has been received in this case that certain persons, who are alleged in Count 1 of the indictment to be co-conspirators of defendant Tresvant, have done or said things during the existence or life of the alleged conspiracy in order to further or advance its goal.

Such acts and statements of these other individuals may be considered by you in determining whether or not the government has proven the charges in Count 1 of the indictment against the defendant.

Since these acts may have been performed and these statements may have been made outside the presence of the defendant and even done or said without the defendant's knowledge, these acts or statements should be examined with particular care by you before considering them against the defendant who did not do the particular act or make the particular statement.

Tape Recordings (7.17)

You have heard some tape recordings that were received in evidence, and you were given a written transcript of one of the tapes.

Keep in mind that the transcript is not evidence. It was given to you only as a guide to help you follow what was being said. The tapes themselves are the evidence. If you noticed any differences between what you heard on the tape and what you read in the transcript, you must rely on what you heard, not what you read. And if you could not hear or understand certain parts of the tape, you must ignore the transcript as far as those parts are concerned.

I told you at the outset that this case was initiated through an indictment. An indictment is but a formal method of accusing a defendant of a crime. It includes the government's theory of the case, and we will be going over in a few minutes the substance of the indictment. The indictment is not evidence of any kind against an accused.

The defendant has pleaded not guilty to the charges contained in the indictment. This plea puts in issue each of the essential elements of the offense described in these instructions and imposes upon the government the burden of establishing each of these elements by proof beyond a reasonable doubt.

I will read the indictment to you once again so that you are well aware of the charges made in the indictment.

The indictment reads:

Defendant's Theory (D)

Mr. Jerrold Tresvant contends that the two informants in the case, Mr. Winston and Mr. Hayslett, anxious to avoid prison for Mr. Winston, conspired together to satisfy the need for drug arrests by targeting Mr. Tresvant as a crack dealer. They knew that Mr. Tresvant dealt in marijuana, so they made plans to meet him to deal marijuana. As the telephone calls were not recorded, they were able to tell the police that the deals were for crack cocaine. They furnished the crack cocaine which was turned over to the police. When Mr. Tresvant declined to deal with them any further, they focused on Mr. Burrow, who was willing to sell them powder cocaine.

21 U.S.C. § 846

Count 1 in this case asserts the defendant violated Title 21, United States Code, Section 846.

Title 21, United States Code, Section 846, provides:

> "Any Person who attempts or conspires to commit any offense defined in this title shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

Conspiracy

The defendant, Jerrold Tresvant, is accused in Count 1 of the indictment of conspiring to possess cocaine base with intent to distribute. It is against federal law to agree with someone to commit the crime of possession with intent to distribute cocaine base, even if that crime is never actually committed.

For you to find the defendant guilty of the crime of conspiracy, you must be convinced that the government has proved each of these two things beyond a reasonable doubt:

First: That sometime during the period charged in the indictment, in the Western District of Tennessee, an agreement existed between at least two people to commit a federal crime. This does not have to be a formal agreement or plan in which everyone who was involved sat down together and worked out all the details. It is enough that the government prove beyond a reasonable doubt that there was a common understanding among those who were involved to commit the crime of possession with intent to distribute cocaine base. So the first thing that must be shown is the existence of an agreement.

Second: The Government must prove that the defendant intentionally joined in this agreement. Again, it is not

necessary to find that he agreed specifically to all the details of the crime. Even if the defendant was not part of the agreement at the very start, he can be found guilty of conspiracy if the government proves that he intentionally joined the agreement later. So the second thing that must be shown is that the defendant was a part of the conspiracy.

In summary, for the defendant to be convicted of the crime of conspiracy, the government must prove two things beyond a reasonable doubt: First, that sometime during the period charged in the indictment, there was an agreement to commit the crime of possession with the intent to distribute cocaine base and second, that the defendant intentionally joined in that agreement.

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 persons 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.

Membership in the Conspiracy

The second element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that the defendant knowingly, willfully, and voluntarily 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 the defendant was, in fact, a member of the conspiracy, you should consider whether the defendant knowingly and willfully joined the conspiracy. Did he participate in it with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective as an associate or worker?

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

As I mentioned a moment ago, before a defendant can be found to have been a conspirator, you must first find that he knowingly

joined in the unlawful agreement or plan. The key question, therefore, is whether the defendant joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement.

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

The defendant's knowledge is a matter of inference from the facts proved. In that connection, I instruct you that to become a member of a conspiracy, the defendant need not have known the identities of each and every other member, nor need he have been apprised of all their activities. Moreover, the defendant need not have been fully informed as to all of the details, or the scope, of the conspiracy in order to justify an inference of knowledge on his part. Furthermore, the defendant need not have joined in all the conspiracy's unlawful objectives.

The extent of a defendant's participation has no bearing on the issue of a defendant's guilt. A conspirator's liability is not measured by the extent or duration of his participation. Indeed, each member may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An

equal role is not what the law requires. In fact, even a single act may be sufficient to draw the defendant within the ambit of the conspiracy.

I want to caution you, however, that the defendant's mere presence at the scene of the alleged crime does not, by itself, make him a member of the conspiracy. Similarly, mere association with one or more members of the conspiracy does not automatically make the defendant a member. A person may know, or be friendly with, a criminal, without being a criminal himself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish 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 with the intention of aiding in the accomplishment of those unlawful ends.

In sum, the defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged,

advised, or assisted in it for the purpose of furthering the illegal undertaking. He thereby becomes a knowing and willing participant in the unlawful agreement - that is to say, a conspirator.

Now, some of the people who may have been involved in these events are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted, or tried together in one proceeding.

Nor is there any requirement that the names of the other conspirators be known. An indictment can charge a defendant with a conspiracy involving people whose names are not known, as long as the government can prove that the defendant conspired with one or more of them. Whether they are named or not does not matter.

In summary, if you find that both elements of Count 1, as set out in these instructions, have been established beyond a reasonable doubt as to the defendant, Jerrold Tresvant, then you must return a verdict of guilty as to Count 1. If you are not so convinced, then you must return a verdict of not guilty as to Count 1.

21 U.S.C. § 841(a)(1)

Counts 2, 3, 4, and 5 in this case assert that the defendant violated Title 21, United States Code, Section 841(a)(1). Title 21, United States Code, Section 841(a)(1), makes it a federal crime or offense for anyone to possess a "controlled substance" with intent to distribute it. This is the law that defendant is charged with in Counts 2, 3, 4, and 5.

Cocaine base is a "controlled substance" within the meaning of the law.

The elements of the offense of possession of cocaine base with the intent to distribute are:

First: That a person knowingly and willfully possessed cocaine base as charged; and

Second: That he possessed the substance with the intent to distribute it.

To "possess with intent to distribute" simply means to possess with intent to deliver or transfer possession of a controlled substance to another person, with or without any financial interest in the transaction.

I have used the term "possession" several times in these instructions.

A person had possession of cocaine base if he had control of it, even though it was in the actual possession of another person. It is not enough that a person may have known about the cocaine base; a defendant possessed the cocaine base only if he had control of it, either alone or together with someone else.

Next, I want to explain something about possession. The law recognizes two kinds of possession -- actual possession and constructive possession. Either one of these constitutes possession under the law.

To establish actual possession, the government must prove that the defendant had direct, physical control over the cocaine base, and knew that he had control of it.

To establish constructive possession, the government must prove that the defendant had the right to exercise physical control over the cocaine base, and knew that he had this right, and that he intended to exercise physical control over it at some time, either directly or through other persons.

For example, if you left something with a friend intending to come back later and pick it up, or intending to send someone else to pick it up for you, you would have constructive possession of it while it was in the actual possession of your friend.

But understand that just being present where something is located does not equal possession. The government must prove

that the defendant had actual or constructive possession of the cocaine base, and knew that he did, for you to find him guilty of this crime. This, of course, is all for you to decide.

You will note that the indictment charges that the offense was committed "on or about" a certain date. The government does not have to prove with certainty the exact date of the alleged offense. It is sufficient if the government proves beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

In the indictment, a particular amount or quantity of cocaine base is alleged. The evidence in the case need not establish the amount or quantity of cocaine base alleged in the indictment, but only that a measurable amount of cocaine base was in fact the subject of the acts charged in the indictment.

The word "knowingly," as that term is used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

The word "willfully," as that term is used from time to time in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids; that is with bad purpose either to disobey or disregard the law.

Next, I want to explain something about proving a defendant's state of mind.

Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that the defendant knowingly did, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

4.01
Aiding and Abetting

For you to find the defendant guilty of the crime of possession in Count 5, it is not necessary for you to find that he personally committed the crime. You may also find him guilty of Count 5 if he intentionally helped or encouraged someone else (i.e., Raymond Burrow) to commit the crime. A person who does this is called an aider and abettor.

But for you to find the defendant guilty of Count 5, as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

(1) First, that the crime set out in Count 5 was committed.

(2) Second, that the defendant helped to commit the crime or encouraged someone else (i.e. Raymond Burrow) to commit the crime in Count 5.

(3) And third, that the defendant intended to help commit or encourage the crime in Count 5.

Proof that the defendant may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more it is not enough.

What the government must prove is that the defendant did something to help or encourage the crime with the intent that the crime be committed.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on the charge of aiding and abetting. If you have a reasonable doubt about any one of these elements as to Count 5, you cannot find the defendant guilty of Count 5 as an aider and abettor.

Summary

In summary, if you are convinced beyond a reasonable doubt that the United States has established each element required under these instructions as to a specific count, then as to that count you should return a verdict of guilty. If you are not so convinced, then you should return a verdict of not guilty.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty on Counts 1 through 5. The defendant is on trial only for the specific offenses alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If a defendant is convicted the matter of punishment is for the judge to determine.

You are here to determine the guilt or innocence of the accused defendant from the evidence in this case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. You must determine whether or not the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused without regard to any belief you may have about guilt or innocence of any other person or persons.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way you are judges -- judges of the facts. Your only interest is to seek the truth from the evidence in the case.

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience. The verdict form will be placed in a folder and handed to you by the Marshall. At any time that you are not deliberating (i.e., when at lunch or during a break in deliberations), the folder and verdict form should be delivered to the Marshall who will deliver it to the courtroom clerk for safekeeping.

[EXPLAIN VERDICT]

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your foreperson fill in the verdict form, date and sign it, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question 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 address you orally. I caution you, however, with regard to any message or question

you might send, that you should not tell me your numerical division at the time.

I will have a copy of these instructions and the indictment itself sent back to you. If you feel a need to see the exhibits which are not being sent to you for further examination, advise the marshal and I will take up your request at that time.

[ANY JURY ALTERNATES NOT ALREADY EXCUSED,
SHOULD BE EXCUSED AT THIS TIME].

You may now retire to begin your deliberations.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	CR. NO. 97-20272
	)	
JERROLD TRESVANT,	)	
	)	
Defendant.	)	

V E R D I C T

We, the jury, on the charges in the indictment for our verdict say:

1. We find the defendant, Jerrold Tresvant, as to Count 1

_____.
(Guilty) or (Not Guilty)

2. We find the defendant, Jerrold Tresvant, as to Count 2

_____.
(Guilty) or (Not Guilty)

3. We find the defendant, Jerrold Tresvant, as to Count 3

_____.
(Guilty) or (Not Guilty)

4. We find the defendant, Jerrold Tresvant, as to Count 4

_____.
(Guilty) or (Not Guilty)

5. We find the defendant, Jerrold Tresvant, as to Count 5

_____.
(Guilty) or (Not Guilty)

_____ _____
DATE FOREPERSON

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CRIMINAL CHARGE BOOK
[Jury Instructions]