

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

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v.

Case No. 5:17-CR-29

TYRONE BYRD

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.

I will start by reading the charge or, as it also is called, the indictment to you. Before I do so, I would like to remind you of the function of an indictment. An indictment is a formal way to accuse a defendant of a crime prior to trial. In this case, the indictment charges the defendant Tyrone Byrd with being a person previously convicted of a crime who possessed a weapon shipped in interstate commerce. Mr. Byrd is not on trial for any act or any conduct not specifically charged in the indictment.

An indictment is not evidence. An indictment does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the charge against the defendant. The defendant has pleaded not guilty to the indictment. You have been chosen and sworn as jurors in this case to

determine the issues of fact that have been raised by the allegations of the indictment and the denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice against the defendant, or the prosecution.

By reading the indictment I do not mean to convey any view or opinion about whether the charge it contains has been proved to be true.

[READ INDICTMENT]

I will now instruct you concerning issues of law which apply generally to the trial of this case.

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE

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

The government must prove the defendant guilty beyond a reasonable doubt. The question is, what is a reasonable doubt? 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. A reasonable doubt may arise from a lack of evidence. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy.

In a criminal case, the burden is at all times upon the government to prove guilt beyond a reasonable doubt. The law does not require the government to prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to a defendant, which means that it is always the government's burden to prove each of the elements of the crime charged beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

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

JURORS' EXPERIENCE/SPECIALIZED KNOWLEDGE

Anything you have seen or heard outside the courtroom is not evidence, and must be disregarded entirely. It would be a violation of your oath as jurors to consider anything outside the courtroom in your deliberations. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable

inferences as you feel are justified in light of the evidence. However, if any juror has specialized knowledge, expertise, or information with regard to the facts and circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

EVIDENCE

You have seen and heard the evidence produced in this trial, and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits that have been admitted into evidence, and all the facts that have been admitted or stipulated. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the defendant's guilt beyond a reasonable doubt, you must find him not guilty. Your verdict must be based solely on the evidence introduced at trial, or the lack thereof.

STRICKEN TESTIMONY/ATTORNEYS' STATEMENTS/COURT'S RULINGS

I caution you that you should not consider or base your decision upon any testimony or exhibit that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. By the rulings the court made in the course of the trial, I did not intend to indicate to you any of my own preferences, or to influence you in any manner regarding how you should decide the case. The attorneys have a duty to object to evidence they believe is not admissible. You must not hold it against either side if an attorney made an objection.

CREDIBILITY OF WITNESSES

You, as jurors, are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness, because you may accept or reject the testimony of any witness, in whole or in part. In weighing the testimony of the witnesses you have heard, you should consider their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if any; their resentment or anger, if any, toward the defendant; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper. You may accept all of it, some of it, or reject it altogether.

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

LAW ENFORCEMENT WITNESSES

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

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

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

DEFENDANT NOT TESTIFYING

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

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

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 the defendant did not testify or present evidence. Do not even discuss it in your deliberations.

BIAS, PREJUDICE, AND EQUALITY BEFORE THE COURT

You are to perform the duty of finding the facts without bias or prejudice toward any party. You are to perform this duty in an attitude of complete fairness and impartiality. You must not allow any of your personal feelings about the nature of the crime charged to interfere with your deliberations, or influence the weight given to any of the evidence.

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

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

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

The question of possible punishment of the defendant in the event of a conviction is not the jury's concern and should not influence your deliberations. Your function is to weigh the evidence in the case and to determine whether the defendant is guilty beyond a

reasonable doubt, solely upon the basis of such evidence. If the defendant is convicted, the court will consider the issue of punishment in a separate phase of the case.

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

Having explained the general guidelines by which you will evaluate the evidence in this case, I will now instruct you with regard to the law that is applicable to your determinations in this case.

It is your duty as jurors to follow the law as stated to you in these instructions and to apply the rules of law to the facts that you find from the evidence. You will not be faithful to your oath as jurors if you find a verdict that is contrary to the law that I give to you.

However, it is the sole province of the jury to determine the facts in this case. I do not, by any instructions given to you, intend to persuade you in any way as to any question of fact.

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

THE ESSENTIAL ELEMENTS OF THE OFFENSE

. Date of the Offense – “In or about” explained

The indictment charges that the offense was committed on or about October 5, 2016. Although it is necessary for the government to prove beyond a reasonable doubt that the 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 offense was committed precisely on the date charged.

Place of the Offense

The indictment charges that the offense was committed in the District of Vermont which means within the geographic boundaries of Vermont.

With respect to the place of the offense, the Government has the burden of proving that it is more likely than not that the offense occurred within the geographic boundaries of Vermont.

The government has the burden of proving both the date of the offense and the location of the offense. If you determine that the government has not proved both of these facts, you should find the defendant not guilty. If you determine that the government has proved these facts, then you should consider whether it has also proved the legal elements of the crime of possession of a firearm by a person previously convicted of a crime.

I. FIRST ELEMENT – DEFENDANT’S PRIOR CONVICTION

The first element of the offense is that before the date the defendant is charged with possessing the firearm, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year. The parties have stipulated and agreed that Mr. Byrd was convicted of a crime punishable by a term of imprisonment exceeding one year prior to October 5, 2016.

Second Element – Possession of Firearm

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

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

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

To satisfy this element, you must also find that the defendant knowingly possessed the firearm. This means that he possessed the firearm purposely and voluntarily, and not by accident or mistake. It also means that he knew that the weapon was a firearm, as we commonly use the word. However, the government is not required to prove that the defendant knew that he was breaking the law.

Third Element – Firearm In or Affecting Commerce

The third element that the government must prove beyond a reasonable doubt is that the firearm the defendant is charged with possessing was in or affecting interstate commerce.

This means that the government must prove that at some time prior to the defendant’s possession, the firearm had traveled in interstate commerce. It is sufficient

for the government to satisfy this element by proving that at any time prior to the date charged in the Indictment, the firearm crossed a state line. It is not necessary that the government prove that the defendant himself carried it across a state line, nor must the government prove who carried it across or how it was transported. It is also not necessary for the government to prove that the defendant knew that the firearm had previously traveled in interstate commerce.

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

UNANIMOUS VERDICT REQUIRED

To return a verdict, it is necessary that every juror agree to the verdict. In order to find the defendant guilty, your verdict must be unanimous regarding each essential element of the offense.

JUROR NOTE TAKING

During this trial, you have been provided with pencil and paper, and some of you have taken notes. As I explained at the beginning of the trial, all jurors should be given equal attention during the deliberations regardless of whether or not they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. You may not use your notes as authority to persuade your fellow jurors as to what a witness did or did not say. In your deliberations you must rely upon your

collective memory of the evidence in deciding the facts of the case. If there is any difference between your memory of the evidence and your notes, you may ask that the record of the proceedings be read back. If a difference still exists, the record must prevail over your notes.

JURY QUESTIONS

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

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

- (1) Write out your question, and have the foreperson sign it;
- (2) Knock on the door of the jury room; and
- (3) Deliver your note to the Court Officer to give to me.

Similarly, any other question you may have for the court should be sent to me in writing in the same manner. I will give you my answer back in writing.

CONCLUSION

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

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

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

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. If a vote is to be taken, your foreperson will ensure that it is done. A verdict form has been prepared for your conclusions. If the verdict form varies in any way from the instructions provided within this jury charge, I instruct you that you are to follow the instructions provided within this jury charge.


After you have reached an agreement, the foreperson will record a verdict of guilty or not guilty. Your foreperson will then sign and date the verdict form and you will return to the courtroom. In all other respects, a foreperson is the same as any other juror. His or her vote does not count more than any other member of the jury.

If, during your deliberations you should desire to communicate with the court, please put your message or question in writing signed by the foreperson, and pass the

note to the Court Officer who will bring it to my attention. I will then confer with the attorneys and I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can speak with you. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time. You should also never communicate the subject matter of your note or your deliberations to any member of the court's staff.

I appoint _____ as your foreperson.

Dated at Rutland, in the District of Vermont, this 6th day of March, 2018.



Geoffrey W. Crawford, Judge
United States District Court