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UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA :  
 :  
 v. : Cr. No. 1:97-CR-066  
 :  
 STEVEN BENNETT :

JURY CHARGE

Members of the Jury:

This case is a criminal prosecution brought by the United States against defendant Steven Bennett. The Grand Jury Indictment charges the defendant with three counts. You will receive a copy of the Indictment to take with you into the jury room.

The first count of the Indictment charges Steven Bennett with being a person convicted of a crime, punishable by imprisonment for more than one year, who possessed a weapon shipped in interstate or foreign commerce. The second and third counts charge Steven Bennett with being a person convicted of a crime, punishable by imprisonment for more than one year, who possessed ammunition shipped in interstate or foreign commerce.

ROLE OF INDICTMENT

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At this time, I would like to remind you of the function of a grand jury indictment. An indictment is merely a formal way to accuse the defendant of a crime preliminary to trial. An indictment is not evidence. The 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 charges in this 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.

#### MULTIPLE COUNTS

A separate crime or offense is charged in each of the three counts of the Indictment. Each charge against the defendant and the evidence pertaining to each charge should be considered separately. You must return separate verdicts on each count in which the defendant is charged. The fact that you may find the defendant not guilty or guilty as to one of the offenses charged

should not control your verdict as to any other offense charged against the defendant.

PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

Although the defendant has been indicted, you must remember that an indictment is only an accusation. It is not evidence. The defendant has pled not guilty to the Indictment.

As a result of the defendant's plea of not guilty, the burden is on the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

The law presumes the defendant to be innocent of all the charges against him. I therefore instruct you that the defendant is to be presumed by you to be innocent throughout your deliberations until such time, if ever, you as a jury are satisfied that the government has proven him guilty beyond a reasonable doubt.

The defendant begins the trial here with a clean slate. This presumption of innocence alone is sufficient to acquit a

defendant unless you as jurors are unanimously convinced beyond a reasonable doubt of his guilt, after a careful and impartial consideration of all the evidence in this case. If the government fails to sustain its burden, you must find the defendant not guilty.

This presumption was with the defendant when the trial began and remains with him even now as I speak to you and will continue with the defendant into your deliberations unless and until you are convinced that the government has proven his guilt beyond a reasonable doubt.

#### REASONABLE DOUBT

I have said that the government must prove the defendant guilty beyond a reasonable doubt. The question naturally is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is a doubt which would cause a reasonable person to hesitate to act in a manner of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or

her own affairs. A reasonable doubt is not a caprice or whim; it is not a speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy. Under your oath as jurors you are not to be swayed by sympathy; you are to be guided solely by the evidence in this case.

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 that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to the defendant, which means that it is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt.

If, after fair and impartial consideration of all of the evidence you have a reasonable doubt, it is your duty to acquit the defendant. 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.

#### 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 received in evidence, and all the facts which may have been admitted or stipulated. I would now like to call to your attention certain guidelines by which you are to evaluate the evidence.

You may consider two types of evidence: direct and circumstantial. Direct evidence is evidence such as the testimony of an eyewitness. Circumstantial evidence is proof of circumstances from which you may draw a logical conclusion concerning an essential fact in the case.

You may convict a defendant on the basis of circumstantial evidence alone, but only if that evidence convinces you of the guilt of the defendant beyond a reasonable doubt.

#### ARGUMENTS EXCLUDED

The arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. The evidence that you will consider in reaching your verdict consists, as I have said, only of the sworn testimony of witnesses, the stipulations made by the parties, and all exhibits that have been received in evidence.

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

Anything you have seen or heard outside the courtroom is not evidence, and must be entirely disregarded. You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited merely to the bald statements of the witnesses. 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 your experiences.

#### GOVERNMENT AS A PARTY

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

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

The fact that the prosecution is brought in the name of the

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

#### SIMILAR ACTS

The government has offered evidence tending to show that on a different occasion defendant Bennett engaged in conduct similar to the charges in the Indictment.

In that connection, let me remind you that the defendant is not on trial for committing acts not alleged in the Indictment. Accordingly, you may not consider this evidence of similar acts as a substitute for proof that the defendant committed the crimes charged. Nor may you consider this evidence as proof that the defendant has a criminal personality or bad character. The evidence of the other, similar acts was admitted for a more limited purpose and you may consider it only for that limited purpose.

If you determine that the defendant committed the acts charged in the Indictment and the similar acts as well, you may,



but need not, consider those acts not charged in the Indictment for other legitimate purposes, such as proof of the defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake.

Evidence of similar acts may not be considered by you for any other purpose. Specifically, you may not use this evidence to conclude that because the defendant committed the other act he must also have committed the acts charged in the Indictment.

#### CREDIBILITY OF WITNESSES

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

extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons may well hear or see things differently, or may have a different point of view regarding various occurrences. Innocent misrecollection or failure of recollection is not an uncommon experience. 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 to you in this case.

#### RACE, RELIGION, NATIONAL ORIGIN, SEX OR AGE

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

#### LAW ENFORCEMENT WITNESS

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.

#### PRIOR INCONSISTENT STATEMENTS OF A NON-PARTY WITNESS

You may find that a witness has made statements outside of this trial which 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.

#### INSTRUCTIONS ON SUBSTANTIVE LAW OF THE CASE

Having told you 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.

All 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.

#### POSSESSION OF FIREARM BY CONVICTED FELON

The Indictment charges the defendant with being a person convicted of a crime, punishable by imprisonment for more than one year, who possessed a weapon shipped in interstate commerce and who possessed ammunition shipped in interstate commerce.

The relevant statute on this subject is Title 18, United States Code section 922(g), which provides:

It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition

which has been shipped or transported in interstate or foreign commerce.

#### ELEMENTS OF THE OFFENSE

The government must prove each of the following elements beyond a reasonable doubt in order to sustain its burden of proving the defendant guilty:

First, that the defendant was convicted, in any court, of a crime punishable by imprisonment for a term exceeding one year, as charged;

Second, that the defendant knowingly possessed the firearm or ammunition, as charged; and

Third, that the possession charged was in or affecting interstate commerce.

#### FIRST ELEMENT -- DEFENDANT'S PRIOR CONVICTION

The first element the government must prove beyond a reasonable doubt before you can convict 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 that the defendant was convicted of the crimes of burglary and grand larceny in State court in

Vermont and that these crimes are punishable by imprisonment for a term exceeding one year. It has also been stipulated that this felony conviction occurred prior to the time that the defendant is alleged to have possessed the weapon charged in the Indictment.

To satisfy this first element, you need only find beyond a reasonable doubt that the defendant was, in fact, convicted of that crime and that the conviction was prior to the possession of the weapon and ammunition as charged in the Indictment. It is not necessary that the government prove that the defendant knew that the crime was punishable by imprisonment for more than one year, nor is it necessary for the defendant to have been sentenced to imprisonment for more than one year.

I instruct you, in this connection, that the prior convictions that are an element of the charge here, and are not disputed, are only to be considered by you for the fact that they exist and for nothing else. You are not to consider them for any other purpose. You are not to speculate as to what they were for. You may not consider the prior convictions in deciding whether it is more likely than not that the defendant was in knowing possession of the gun and ammunition that is charged, which is the disputed element of the offenses.

SECOND ELEMENT -- POSSESSION OF FIREARM OR AMMUNITION

The second element which the government must prove beyond a reasonable doubt as to each Count of the Indictment is that on or about the date set forth in the Indictment, the defendant knowingly possessed the firearm or ammunition identified therein.

A "firearm" is any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive. The definition does not include the muzzle loader type weapons you have heard about in the trial.

"Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

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 or ammunition is within the defendant's control, he possesses it. If you find that the defendant either had actual possession of the firearm or ammunition, or that he had the power and intention to exercise control over it, even though it was not in his physical possession, you may find that the government has proven possession.

The law also recognizes that possession may be sole or joint. If one person alone possesses it, that is sole



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

To satisfy this element as to each Count, you must also find that the defendant knowingly possessed the firearm or ammunition. This means that he possessed the firearm or ammunition 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, and that the ammunition was ammunition, 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 as to each Count is that the firearm or ammunition the defendant is charged with possessing, was in or affecting interstate or foreign commerce.

This means that the government must prove that at some time

prior to the defendant's possession, the firearm or ammunition had traveled in interstate or foreign commerce.

The parties have stipulated that the firearm identified in Count One and the ammunition identified in Counts Two and Three had traveled in interstate or foreign commerce prior to the time the defendant is alleged to have possessed the firearm and ammunition, as charged in the Indictment.

#### "ON OR ABOUT" EXPLAINED

The Indictment in this case charges in each count that a particular offense was committed "on or about" a certain date. It is not necessary for the government to prove that the offense was committed precisely on the date charged; however, 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 each specific count. For instance, if the Indictment charges that a specific crime occurred on March 5, 1992, and you find from the evidence beyond a reasonable doubt that the alleged crime occurred on March 4, 1992, a date reasonably near March 5, 1992, you should return a verdict of guilty on that charge.

## NOTES

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

The notes that you took are strictly confidential. Do not disclose your notes to anyone other than another juror. Your notes should remain in the jury room and will be collected at the end of the case.

## CONCLUSION

I caution you, members of the jury, that you are here to determine the guilt or innocence of the defendant before you today solely from the evidence in this case. I remind you that the mere fact that this 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. Neither are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

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

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

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

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience. After you have reached agreement as to the counts contained in the Indictment, you will have your foreperson record a verdict of guilty or not guilty as to each count of the Indictment. Your foreperson will then sign and date the verdict form and you will

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

Also, a copy of this charge will go with you into the jury room for your use.

I appoint \_\_\_\_\_ as your foreperson.

Dated at Burlington, in the District of Vermont, this \_\_\_\_\_ day of February, 1998.

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William K. Sessions III  
District Judge