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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA :
 :
 :
 v. : No. 2:98-CR-87-01
 :
 RYAN JAMES :
 GREENWOOD :

JURY INSTRUCTIONS

This case is a criminal prosecution brought by the United States against the defendant Ryan Greenwood. The Grand Jury indictment charges the defendant with two criminal counts involving the illegal possession of a firearm. You will receive a copy of the indictment to take with you into the jury room.

Count 1 of the indictment alleges the defendant, on or about April 15, 1998, knowingly possessed a firearm with a sawed-off barrel which was not registered to him in the national firearms registration and transfer record.

Count 2 of the indictment alleges the defendant, on or about April 15, 1998, knowingly possessed a firearm which had an altered or obliterated manufacturer's serial number and which had traveled in interstate commerce.

The defendant has pleaded not guilty to both counts of the indictment.

ROLE OF INDICTMENT

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

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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 pleaded not guilty to all of the charges in 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 denials made by the not guilty plea. 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 count of the indictment. Each charge 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.

REASONABLE DOUBT

The law presumes a defendant to be innocent of a crime. Thus, although accused, a defendant begins the trial with a "clean slate" -- with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against a defendant. So the presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the government prove guilt beyond all possible doubt.

The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act. 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.

You must remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

So if, after careful and impartial consideration of all the evidence in the case, you have a reasonable doubt that the defendant is guilty of an offense charged in the indictment, then you must acquit the defendant of that offense. Unless the government proves, beyond a reasonable doubt, that the defendant has committed each and every element of the offense charged in the indictment, you must find the defendant not guilty of the offense. Furthermore, if you view the evidence in the case as reasonably permitting either of two conclusions as to any count -- one of innocence, the other of guilt, you must, of course, adopt the conclusion of innocence and find the defendant not guilty of that count.

As I have instructed you, the law presumes that a defendant is innocent of the charges against him or her. The presumption of innocence lasts throughout the trial

and 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 a defendant beyond a reasonable doubt, you must acquit the defendant.

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.

There are two types of evidence which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something she or he knows by virtue of their own senses -- something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is its present existence or condition.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. Circumstantial evidence is of no less value than direct evidence for it is a general rule that the law makes no distinction between direct evidence and circumstantial evidence but requires that your verdict must be based on all the evidence presented.

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

TESTIMONY AND ARGUMENTS EXCLUDED

I caution you that you should entirely disregard any testimony that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. The evidence that you will consider in reaching your verdict consists, as I have said, only of the sworn testimony of witnesses, the stipulations made by the government and the defendant, and all exhibits received in evidence.

During the course of the trial I occasionally asked questions of a witness in order to bring out facts not then fully covered in the testimony. You should not assume that I hold any opinion on matters to which my questions may have related. At all times, you, the jurors, are at liberty to disregard all questions and comments by me in making your findings as to the facts.

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

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.

LAW ENFORCEMENT WITNESS

You have heard the testimony of several 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 or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that their 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 the law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

EXPERT WITNESSES

You have heard testimony from expert witnesses. An expert is allowed to express an opinion on those matters about which the expert has special knowledge and training. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an

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

IMMUNITY OF WITNESS

You have heard the testimony of a witness who has been promised that he will not be prosecuted for any crimes which he may have admitted either here in court or in interviews with the prosecutors, in exchange for testifying truthfully, completely, and fully. The government is permitted to make these promises and is entitled to call witnesses to whom these promises are given. You are instructed that you may convict a defendant on the basis of such a witness' testimony if you find the testimony proves the defendant guilty beyond a reasonable doubt.

However, the testimony of a witness who has been promised that he will not be prosecuted should be examined by you with greater care than the testimony of an ordinary witness. You should scrutinize it closely to determine whether it is colored in such a way as to place guilt upon the defendant in order to further the witness' own interest; for, such a witness, confronted with the realization that he can win his own freedom by helping to convict another, has a motive to falsify his testimony.

The testimony of a witness who has received immunity should be received by you with suspicion and you may give it such weight, if any, as you believe it deserves.

ADMISSION OF DEFENDANT

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

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.

INSTRUCTIONS ON THE
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.

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.

Count 1

Count 1 of the Indictment charges the defendant with possession of an unregistered firearm. The relevant statute on this subject is called the National Firearms Act, which provides that "It shall be unlawful for any person to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record."

PURPOSE OF THE STATUTE

The National Firearms Act provides for the federal registry of certain classes of firearms. The firearms which must be registered are sawed-off shotguns and rifles and machine guns. For the purposes of count one and this statute, the word "firearm" means only those defined types of guns. The central registry is called the National Firearms Registration and Transfer Record.

The information in the registry includes identification of each firearm (usually by a serial number), the date of its registration, and the name and address of the person entitled to possess the firearm. Each maker or importer of firearms shall register in the National Firearms Registration and Transfer Record each firearm made or imported.

It is also required that whenever a firearm is transferred, the person who transfers it must register the firearm in the registry to the person to whom it is being transferred. In order to accomplish this, the transferrer must file with the United States

Treasury Department, Bureau of Alcohol, Tobacco and Firearms an application which includes, among other things, the fingerprints and photograph of the transferee. If the transfer is authorized in writing by the Bureau of Alcohol, Tobacco and Firearms, that authorization effects the registration of the firearm to the transferee.

ELEMENTS OF COUNT 1

The government must prove each of the following elements beyond a reasonable doubt in order to convict on Count 1:

First, that on or about the date alleged in the indictment, the defendant had possession of a firearm;

Second, that the defendant had knowledge that what he was possessing was a firearm; and

Third, that this firearm was not registered to the defendant in the National Firearms Registration and Transfer Record.

POSSESSION OF A FIREARM

The government must prove each of the following elements beyond a reasonable doubt in order to convict.

First, that on or about the day alleged, the defendant did, in fact, have possession of the firearm in question.

Under Title 26 United States Code, section 5861(d), the term "firearm" has a very specific meaning. In this case, the gun at issue is a sawed-off rifle. The government must prove that the object the defendant possessed was a rifle having a barrel of less than 16 inches in length.

To "possess" means to have something within your control. This does not necessarily mean that you must hold it physically, that is, have actual possession of it. As long as the firearm is within your control, you possess it. If you find that the defendant had actual possession, or that he had the power and intention to control the firearm, even though it may have been in the physical possession of another, then you may find that the government has proved possession.

The law recognizes that possession may be sole or joint. If the defendant alone possesses a firearm, that is sole possession. If the defendant jointly with others possesses a firearm, that is joint possession.

Proof of ownership is not required. Nor is the government required to prove that at the time of the receipt, possession or transport the defendant knew that he was breaking the law. It is sufficient to satisfy this element if you find that the defendant possessed the firearm voluntarily and not by accident or mistake.

KNOWING POSSESSION

The second element the government must prove beyond a reasonable doubt is that the defendant knowingly possessed the firearm.

A person is knowingly "in possession" if his possession occurs voluntarily and intentionally and not because of mistake or accident. The defendant may not be convicted of possession of a firearm if he did not intend to possess it.

In addition, the government must prove that the defendant knew that the device he possessed had all of the characteristics, that is a barrel of less than 16 inches in length, which makes it subject to regulation as a firearm as I just defined that

term for you.

FIREARM NOT REGISTERED TO DEFENDANT

The third element which the government must prove beyond a reasonable doubt is that the firearm in question was not registered to the defendant in the National Firearms Registration and Transfer Record.

The evidence in this case contains a certificate showing that after diligent search of the National Firearms Registration and Transfer Record, no record was found that the firearm which the government claims was involved in this case was registered to the defendant. From such evidence you may, but need not, find that the government has sustained its burden of proving beyond a reasonable doubt the non-registration of the firearm.

Count 2

Count 2 of the indictment charges the defendant with knowingly possessing a firearm with an altered or obliterated serial number. The relevant statute on this subject is section 922(k) of Title 18 of the United States Code, which provides that "It shall be unlawful for any person knowingly . . . to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce."

ELEMENTS OF THE OFFENSE

In order to prove the defendant guilty of the offense charged in Count 2, the government must prove each of the following elements beyond a reasonable doubt.

First, that the defendant possessed the firearm described in the indictment.

Second, that the importer's or manufacturer's serial number on that firearm had been altered or obliterated.

Third, that the defendant acted knowingly.

Fourth, that the firearm had at some time traveled in interstate commerce.

POSSESSION OF THE FIREARM

The first element that the government must prove beyond a reasonable doubt is that the defendant possessed a firearm as alleged in the indictment.

A "firearm" for the purposes of count 2 and § 922(k) 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. As long as the firearm is within the defendant's control, he possessed 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 the government has proven possession.

OBLITERATED SERIAL NUMBER

The second element the government must prove beyond a reasonable doubt is that the importer's or manufacturer's serial number on that firearm had been altered or obliterated.

DEFENDANT ACTED KNOWINGLY

The third element the government must prove beyond a reasonable doubt is

that the defendant acted knowingly.

To satisfy this element, you must 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 that word. However, the government is not required to prove that the defendant knew he was breaking the law.

In addition to proving that the defendant possessed the firearm knowingly, the government must also prove that the defendant knew that the serial number was altered or obliterated.

FIREARM TRANSPORTED IN INTERSTATE COMMERCE

The fourth element the government must prove beyond a reasonable doubt is that at any time in the past, the firearm had been shipped or transported in interstate or foreign commerce.

This requires the government to prove that the firearm had been shipped or transported between one state and another state, ^{at any time} or between this country and another country.

It is not necessary for the government to prove that the defendant had any involvement in the shipping or transportation of the firearm, or that the defendant knew that the firearm had previously been shipped or transported in interstate or foreign commerce.

UNANIMOUS VERDICT

The verdict must represent the considered judgment of each juror. In order to

return a verdict, it is necessary that each juror agree.

It is your duty as jurors to consult with one another, and to deliberate with a view toward reaching an agreement. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of other jurors or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges -- the judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

NOTES

You have taken notes during the trial for use in your deliberations. These notes may be used to assist your recollection of the evidence, but your memory, as jurors, controls. Your notes are not evidence, and should not take precedence over your independent recollections of the evidence. The notes that you took are strictly confidential. Do not disclose your notes to anyone other than the other jurors. Your notes should remain in the jury room and will be collected at the end of the case.

CLOSING INSTRUCTIONS

I have selected _____ to act as your foreperson.

The foreperson will preside over your deliberations, and will be your spokesperson here in Court.


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

A verdict form has been prepared for your convenience. You will take this form to the jury room. Each of the interrogatories or questions on the verdict form requires the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided opposite each question, and will date and sign the special verdict, when completed.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note through the Courtroom Security Officer signed by your foreperson. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject related to the merits of the case other than in writing, or orally here in open Court.

You will note that all other persons are also forbidden to communicate in any way or manner with any member of the jury on any subject related to the merits of the case.

Dated: Burlington, Vermont
May 5, 1999.



William K. Sessions III
United States District Court Judge