

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CLERK

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DEPUTY CLERK

UNITED STATES OF AMERICA,)

v.)

Case No. 2:25-cr-00117- |

MOHAMED MUBARAK,)

Defendant.)

JURY CHARGE

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

This case is a criminal prosecution brought by the United States against the defendant MOHAMED MUBARAK. The indictment charges MOHAMED MUBARAK with five counts. The indictment reads as follows:

Count One

On or about December 2, 2023, in the District of Vermont, the defendant MOHAMED MUBARAK, in connection with the acquisition of a firearm, that is, a Canik TP-9SF Elite 9mm pistol, from a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement, and knowingly furnished and exhibited a misrepresented identification to the licensed dealer, which statement and identification was intended and likely to deceive the dealer, as to a fact material to the lawfulness of such sale of the firearm to him under Chapter 44 of Title 18, in that defendant MOHAMED MUBARAK represented himself to the dealer as another person, presented the photographic identification of the other person, and falsely executed a Bureau of Alcohol, Tobacco, Firearms and Explosives Form 4473, Firearms Transaction Record in the name of another person.

Count Two

On or about December 8, 2023, in the District of Vermont, defendant MOHAMED MUBARAK, in connection with the acquisition of a firearm, that is, a pink SCCY Industries DVG-1 9mm pistol, from a licensed dealer

of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement, and knowingly furnished and exhibited a misrepresented identification to the licensed dealer, which statement and identification was intended and likely to deceive the dealer, as to a fact material to the lawfulness of such sale of the firearm to him under Chapter 44 of Title 18, in that defendant MOHAMED MUBARAK represented himself to the dealer as another person, presented the photographic identification of the other person, and falsely executed a Bureau of Alcohol, Tobacco, Firearms and Explosives Form 4473, Firearms Transaction Record in the name of another person.

Count Three

On or about December 2, 2023, in the District of Vermont, the defendant, MOHAMED MUBARAK, knowingly used, without lawful authority, one or more means of identification of another person during and in relation to his knowing false and fictitious statements, and knowing furnishing and exhibiting misrepresented identification to a licensed dealer in connection with his acquisition of a firearm, as alleged in Count One, knowing that the means of identification belonged to another actual person.

Count Four

On or about December 8, 2023, in the District of Vermont, the defendant, MOHAMED MUBARAK, knowingly used, without lawful authority, one or more means of identification of another person during and in relation to his knowing false and fictitious statements, and knowing furnishing and exhibiting misrepresented identification to a licensed dealer in connection with his acquisition of a firearm, as alleged in Count Two, knowing that the means of identification belonged to another actual person.

Count Five

Between in or about December 2023 through in or about March 2024, in the District of Vermont, the defendant, MOHAMED MUBARAK, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year and knowing that he had been convicted of such a crime, knowingly possessed firearms, specifically a Canik TP-9SF Elite 9mm pistol and a pink SCCY Industries DVG-1 9mm pistol, which had been shipped and transported in interstate and foreign commerce, and possessed in and affecting commerce.

ROLE OF THE INDICTMENT

At this time, I would like to remind you of the function of an indictment. An indictment is merely a formal way to accuse a defendant of a crime before trial. 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 charges against the defendant. The defendant has pleaded not guilty to the counts 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 in 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 government.

ROLE OF THE COURT, THE JURY, AND COUNSEL

Your first duty is to consider and decide the factual issues of this case. You are the sole and exclusive judges of the facts. By the rulings which I made during the course of the trial, I did not intend to indicate to you or to express my own views about this case. You as jurors weigh the evidence, you determine the credibility or believability of the witnesses, you resolve any conflicts there may be in the evidence, and you draw any reasonable inferences or conclusions that you believe are justified by the facts as you find them. In a moment, I will define the word “evidence” and instruct you on how to assess it, including how to judge whether the witnesses have been honest and should be believed.

Your second duty is to apply the law that I give you to the facts. Do not single out one instruction alone, but consider the instructions as a whole. You should not be concerned with whether you agree with any instruction given by the court. You may have a different opinion as to what the law ought to be, but it would be a violation of your sworn duty as jurors to base your verdict on any version of the law other than what is contained in the instructions given by the court.

The lawyers may have referred to some of the governing rules of law in their argument. However, if you find any differences between the law as stated by the lawyers and the law as stated by me in these instructions, you must follow my instructions. It is the lawyers’ job to point out the things that are most significant or most helpful to their side of the case. But remember that their statements regarding the law are not evidence in this case.

In addition, nothing I say in these instructions should be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts; rather, that job is yours alone. You must perform your duty as jurors with complete fairness and impartiality. You should consider the evidence carefully and without sympathy, bias, or prejudice for or against any party. All parties expect that you will diligently examine all of the evidence, follow the law as it is now being given to you, and reach a just verdict regardless of the consequences.

JURORS' EXPERIENCE OR 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.

JURORS' SYMPATHY, PASSION, OR PREJUDICE

In arriving at a verdict, you must not permit yourselves to be influenced in the slightest degree by sympathy, passion, or prejudice, or any other emotion in favor of or against either party. The law forbids you from being governed by mere sentiment, conjecture, sympathy, passion, or prejudice.

EQUALITY BEFORE THE COURT

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

**RACE, RELIGION, NATIONAL ORIGIN, SEX,
SEXUAL ORIENTATION, OR AGE**

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

BIAS AND PREJUDICE

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 to influence the weight given to any of the evidence.

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE

The government must prove the defendant guilty beyond a reasonable doubt. The question is: what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. 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 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 element 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 also not obligated to produce any evidence by cross-examining the witnesses for the government.

The law presumes the defendant is innocent of the charges against him. The presumption of innocence lasts throughout the trial and during your deliberations. The

presumption of innocence ends only if you, the jury, find beyond a reasonable doubt that the defendant is guilty. Should the government fail to prove the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

If, after a fair and impartial consideration of all the evidence against the defendant, you have a reasonable doubt, then it is your duty to find the defendant not guilty. On the other hand, if, after a 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 admitted into evidence, and all the facts that have been admitted or stipulated. I would now like to call your attention to certain guidelines by which you are to evaluate the evidence.

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

Circumstantial evidence is evidence that tends to prove a disputed fact by proof of other facts. You infer on the basis of reason, experience, and common sense from one established fact the existence or non-existence of some other fact. For example, if you were to see cow tracks in a pasture, that would be circumstantial evidence that there are or were cows in the pasture.

Circumstantial evidence is of no less value than direct evidence. Circumstantial evidence alone may be sufficient evidence of guilt.

You are only to determine whether the defendant is guilty or not guilty of the charges in the indictment. Your determination must be made only from the evidence admitted by the court in this case. The defendant is not on trial for any conduct or offense not charged in the indictment. You should consider evidence about other acts only as they

relate to the charges against the defendant, and whether they establish or fail to establish a motive or modus operandi for the charged crimes.

The charts and summaries were shown to you in order to make the other evidence more meaningful and to aid you in considering the evidence. They are no better than the testimony or the documents upon which they are based, and are not themselves independent evidence. Therefore, you are to give no greater consideration to these summaries than you would give to the evidence upon which they are based. It is for you to decide whether the charts or summaries correctly present the information contained in the testimony and in the exhibits on which they were based. You are entitled to consider the charts and summaries if you find that they are of assistance to you in analyzing the evidence and understanding the evidence.

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, then you must find him not guilty. Your verdict must be based solely on the evidence introduced at trial, or the lack thereof.

EVIDENCE OBTAINED BY SEARCH

You have heard testimony about evidence seized in connection with certain searches conducted by law enforcement officers. Searches are appropriate law enforcement actions. Whether you approve or disapprove of how the evidence was obtained should not enter into your deliberations.

You must, therefore, regardless of your personal opinions, give this evidence full consideration along with all the other evidence in the case in determining whether the government has proven the defendant's guilt beyond a reasonable doubt. You and you alone, however, decide the weight, if any, to give the evidence.

GOVERNMENT NOT REQUIRED TO UTILIZE PARTICULAR INVESTIGATIVE METHODS

The government is not required to pursue any particular investigative method or methods in the investigation or prosecution of a crime. I remind you, however, that the government is always required to prove the defendant's guilt beyond a reasonable doubt.

STIPULATIONS REGARDING AUTHENTICITY OR ADMISSION OF EVIDENCE

The attorneys in this case have agreed that certain evidence is authentic or admissible. This stipulation has been referred to by the attorneys. You may treat evidence admitted pursuant to this stipulation like any other evidence in the case and give it the weight, if any, that you believe it deserves.

ATTORNEYS' STATEMENTS AND OBJECTIONS AND THE COURT'S RULINGS

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.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons may hear or see things differently, or may have a different point of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

**WITNESSES WHO HAVE, OR HAVE RECENTLY,
OR ARE CURRENTLY USING CONTROLLED SUBSTANCES**

There has been evidence introduced at trial that some of the individuals who the government called as witnesses were using controlled substances when the events they observed or participated in took place. There is nothing improper about calling such witnesses to testify about events within their personal knowledge.

However, testimony from such witnesses must be examined with greater scrutiny than the testimony of other witnesses. The testimony of a witness who was using controlled substances at the time of the events he or she is testifying about, or who has recently or is currently using controlled substances during the time of his or her testimony, may be less believable because of the effect the controlled substances may have on his or her ability to perceive or remember the events in question.

If you decide to accept the testimony of such a witness, after considering it in light of all the evidence in this case, then you may give it whatever weight, if any, you find it deserves.

IMMUNITY OF GOVERNMENT WITNESS

You have heard the testimony of a witness who has testified under a grant of immunity from the government. What this means is that the testimony of the witness may

not be used against her in any criminal case, except a prosecution for perjury or giving a false statement.

You are instructed that the government is entitled to call, as a witness, a person who has been granted immunity by agreement with the government and that you may convict a defendant on the basis of such a witness's testimony alone, if you find that the testimony proves the defendant guilty beyond a reasonable doubt.

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

Such testimony should be scrutinized by you with great care and you should act upon it with caution. If you believe it to be true, and determine to accept the testimony, you may give it such weight, if any, as you believe it deserves.

COOPERATORS

The testimony of a cooperator, someone who provides evidence against someone to escape or limit punishment for his or her own misdeeds or crimes or for other personal reason or advantage, must be examined and weighed with greater care than the testimony of a witness who is not so motivated.

Yesi Garelnabi may be considered to be a cooperator in this case. You must determine whether his testimony has been affected by self-interest, or by the agreement he or she has with the government, or by prejudice against the defendant.

INTEREST IN THE OUTCOME

As a general matter, in evaluating the credibility of each witness, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest may create a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering has an interest in the

outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it only with great care.

This is not to suggest that any witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

WITNESSES WITH SPECIALIZED KNOWLEDGE

You have heard evidence from witnesses who have special knowledge, experience, training, or education in their profession or area of study. Because of this, the witness may offer an opinion about one or more of the issues in the case.

In evaluating the witness's testimony, you should evaluate his or her credibility and statements just as you would with any other witness. You should also evaluate whether the witness's opinion is supported by the facts that have been proven, and whether the opinion is supported by the witness's knowledge, experience, training, or education. You are not required to give the testimony of the witness any greater weight than you believe it deserves just because the witness has specialized knowledge.

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 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 that testimony whatever weight, if any, you find it deserves.

PRIOR INCONSISTENT STATEMENTS OF A WITNESS

You may have heard evidence that a certain witness or witnesses made statements on an earlier occasion which counsel argues is inconsistent with the witness's trial

testimony. Evidence of the prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself or herself. If you find that the witness made an earlier statement that conflicts with his or her trial testimony, you may consider that fact in deciding how much of his or her trial testimony, if any, to believe.

It is your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent and, if so, how much weight, if any, to give to the inconsistent statement in determining whether to believe all or part of the witness's testimony.

STATEMENTS BY THE DEFENDANT

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

In deciding what weight to give the defendant's statements, you should first examine with great care whether each statement was made and whether, in fact, it was voluntarily and understandingly made. I instruct you that you are to give the statements such weight as you feel they deserve in light of all the evidence.

DEFENDANT NOT TESTIFYING

You may have observed that the defendant did not testify in this case. The 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. The defendant's decision not to testify raises no presumption of guilt and does not permit you to draw any unfavorable inference. A defendant is never required to prove that he or she is not guilty. Therefore, in determining the defendant's guilt or innocence of the crime charged, you are not to consider, in any manner, the fact that the defendant did not testify. Do not even discuss it in your deliberations.

OTHER ACTS

You are only to determine whether the defendant is guilty or not guilty of the charges in the indictment. Your determination must be made only from the evidence admitted by the court in this case. The defendant is not on trial for any conduct or offense

not charged in the indictment. You should consider evidence about other acts only as they relate to the charges against the defendant.

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

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

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

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

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

“ON OR ABOUT” EXPLAINED

The indictment charges that the offenses were committed “on or about” a certain date. Although it is necessary for the government to prove beyond a reasonable doubt that each 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.

THE INDICTMENT AND THE STATUTE – COUNT ONE

Count One of the indictment charges the defendant with violating Title 18 of the United States Code, Section 922(a)(6), which makes it a crime to make a false statement or provide misrepresented identification to a licensed firearm dealer in order to obtain a firearm.

The defendant has entered a plea of not guilty to this allegation in the indictment. The government, therefore, assumes the responsibility of proving each of the essential

elements of the crime of making a false statement or providing misrepresented identification to a licensed firearm dealer in order to obtain a firearm beyond a reasonable doubt.

The statute under which Count One of the indictment is brought, Title 18, United States Code, Section 922(a)(6), provides in pertinent part that:

It shall be unlawful . . . for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter[.]

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 charged crime.

THE ESSENTIAL ELEMENTS FOR COUNT ONE: FALSE STATEMENT OR MISREPRESENTED IDENTIFICATION IN ACQUISITION OF A FIREARM

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

- (1) The defendant made a false or fictitious statement or provided a false, fictitious, or misrepresented identification while obtaining a firearm from a federal firearms licensee;
- (2) The defendant knew the statement was false or fictitious or knew the identification was false, fictitious, or misrepresented; and
- (3) The statement or identification was intended to or was likely to deceive about a material fact, i.e., one which would affect the legality of the transfer of the firearm from the dealer to the defendant.

FIRST ELEMENT – FALSE STATEMENT OR MISREPRESENTED IDENTIFICATION

The first element the government must prove beyond a reasonable doubt under Count One is that, on or about the date set forth in the indictment, the defendant made a

false statement or provided a misrepresented identification while obtaining a firearm from a federal firearms licensee.

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

A “federal firearms licensee” is one engaged in the business of selling firearms at wholesale or retail and who is licensed under federal law.

The term “acquisition of firearms” encompasses all acts that relate to the purchase and sale of firearms. If you find that the defendant intended that after the transaction was completed he would be in control of, have possession of, or would be in a position to dispose of a firearm, then the transaction was in connection with the acquisition of a firearm within the meaning of the statute.

A statement is “false” or “fictitious” if it was untrue when made and was then known to be untrue by the person making it. If the question being answered was unclear or confusing, the government has the responsibility to prove, beyond a reasonable doubt, that the defendant’s answer was intentionally false either by showing (1) the question – as the defendant must have understood it, based on an ordinary person’s reading of the question – was falsely answered, or (2) there is no reasonable way to interpret the question that would make the defendant’s answer factually correct.

An “identification” is “any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including . . . any name, social security number, date of birth, official State or government issued driver’s license or identification number; or unique electronic identification number, address, or routing code; or access device.”

An identification is “misrepresented” if it depicts another, actual person, living or dead.

Count One of the indictment alleges the defendant committed the crime in two ways. The first is by knowingly making a false and fictitious written statement to the federal firearms licensee. The second is by knowingly furnishing and exhibiting a misrepresented identification to the federal firearms licensee.

The government does not have to prove both of these for you to return a guilty verdict on Count One. Proof beyond a reasonable doubt on one is enough. But in order to return a guilty verdict on Count One, all of you must agree that the same one has been proved. Thus, as you consider Count One, all of you must agree beyond a reasonable doubt that the defendant knowingly made a false and fictitious written statement to the federal firearms licensee; or all of you must agree beyond a reasonable doubt that the defendant knowingly furnished and exhibited a misrepresented identification to the federal firearms licensee, or both.

SECOND ELEMENT – DEFENDANT’S KNOWLEDGE

The second element the government must prove beyond a reasonable doubt under Count One is that the defendant knew the statement was false or fictitious or knew the identification was misrepresented.

“Knowingly” means to act voluntarily and intentionally and not by mistake or accident. To prove the defendant acted knowingly, it is not necessary for the government to prove that the defendant was aware of the specific law or rule that his conduct may be violating.

THIRD ELEMENT – INTENT TO DECEIVE

The third element the government must prove beyond a reasonable doubt under Count One is that the statement or identification was intended to or was likely to deceive the federal firearms licensee about a material fact.

A fact is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of the person to whom it was addressed. The government is not required to prove that the statement actually influenced the person.

A misrepresentation as to a name is material under this law, since another section of the statute makes the sale unlawful unless the federal firearms licensee records, among other matters, the name of the purchaser. The fact that a person could lawfully obtain a firearm under his true name does not make his giving a false name immaterial. It is no defense with respect to this element that a person may have been eligible to acquire the

firearm. A person who is eligible to acquire a firearm must nonetheless properly identify himself by name, among other matters.

It is the purchaser's purpose, the intent with which he acted, or the likelihood that the alleged misrepresentation would deceive the federal firearms licensee that you are called upon to resolve. The fact that the federal firearms licensee may not have actually been deceived is of no consequence.

THE INDICTMENT AND THE STATUTE – COUNT TWO

Count Two of the indictment charges the defendant with violating Title 18 of the United States Code, Section 922(a)(6), which makes it a crime to make a false statement or provide misrepresented identification to a licensed firearm dealer in order to obtain a firearm.

The defendant has entered a plea of not guilty to this allegation in the indictment. The government, therefore, assumes the responsibility of proving each of the essential elements of the crime of making a false statement or providing misrepresented identification to a licensed firearm dealer in order to obtain a firearm beyond a reasonable doubt.

The statute under which Count Two of the indictment is brought, Title 18, United States Code, Section 922(a)(6), provides in pertinent part that:

It shall be unlawful . . . for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter[.]

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 charged crime.

THE ESSENTIAL ELEMENTS FOR COUNT TWO: FALSE STATEMENT OR MISREPRESENTED IDENTIFICATION IN ACQUISITION OF A FIREARM

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

- (1) The defendant made a false or fictitious statement or provided a false, fictitious, or misrepresented identification while obtaining a firearm from a federal firearms licensee;
- (2) The defendant knew the statement was false or fictitious or the identification was false, fictitious, or misrepresented; and
- (3) The statement or identification was intended to or was likely to deceive about a material fact, i.e., one which would affect the legality of the transfer of the firearm from the dealer to the defendant.

FIRST ELEMENT – FALSE STATEMENT OR MISREPRESENTED IDENTIFICATION

The first element the government must prove beyond a reasonable doubt under Count Two is that, on or about the date set forth in the indictment, the defendant made a false statement or provided a misrepresented identification while obtaining a firearm from a federal firearms licensee.

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

A “federal firearms licensee” is one engaged in the business of selling firearms at wholesale or retail and who is licensed under federal law.

The term “acquisition of firearms” encompasses all acts that relate to the purchase and sale of firearms. If you find that the defendant intended that after the transaction was completed he would be in control of, have possession of, or would be in a position to dispose of a firearm, then the transaction was in connection with the acquisition of a firearm within the meaning of the statute.

A statement is “false” or “fictitious” if it was untrue when made and was then known to be untrue by the person making it. If the question being answered was unclear or confusing, the government has the responsibility to prove, beyond a reasonable doubt, that the defendant’s answer was intentionally false either by showing (1) the question – as

the defendant must have understood it, based on an ordinary person's reading of the question – was falsely answered, or (2) there is no reasonable way to interpret the question that would make the defendant's answer factually correct.

An "identification" is "any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including . . . any name, social security number, date of birth, official State or government issued driver's license or identification number; or unique electronic identification number, address, or routing code; or access device."

An identification is "misrepresented" if it depicts another, actual person, living or dead.

Count Two of the indictment alleges the defendant committed the crime in two ways. The first is by knowingly making a false and fictitious written statement to the federal firearms licensee. The second is by knowingly furnishing and exhibiting a misrepresented identification to the federal firearms licensee.

The government does not have to prove both of these for you to return a guilty verdict on Count Two. Proof beyond a reasonable doubt on one is enough. But in order to return a guilty verdict on Count Two, all of you must agree that the same one has been proved. Thus, as you consider Count Two, all of you must agree beyond a reasonable doubt that the defendant knowingly made a false and fictitious written statement to the federal firearms licensee; or all of you must agree beyond a reasonable doubt that the defendant knowingly furnished and exhibited a misrepresented identification to the federal firearms licensee, or both.

SECOND ELEMENT – DEFENDANT'S KNOWLEDGE

The second element the government must prove beyond a reasonable doubt under Count Two is that the defendant knew the statement was false or fictitious or knew the identification was misrepresented.

"Knowingly" means to act voluntarily and intentionally and not by mistake or accident. To prove the defendant acted knowingly, it is not necessary for the government

to prove that the defendant was aware of the specific law or rule that his conduct may be violating.

THIRD ELEMENT – INTENT TO DECEIVE

The third element the government must prove beyond a reasonable doubt under Count Two is that the statement or identification was intended to or was likely to deceive the federal firearms licensee about a material fact.

A fact is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of the person to whom it was addressed. The government is not required to prove that the statement actually influenced the person.

A misrepresentation as to a name is material under this law, since another section of the statute makes the sale unlawful unless the federal firearms licensee records, among other matters, the name of the purchaser. The fact that a person could lawfully obtain a firearm under his true name does not make his giving a false name immaterial. It is no defense with respect to this element that a person may have been eligible to acquire the firearm. A person who is eligible to acquire a firearm must nonetheless properly identify himself by name, among other matters.

It is the purchaser’s purpose, the intent with which he acted, or the likelihood that the alleged misrepresentation would deceive the federal firearms licensee that you are called upon to resolve. The fact that the federal firearms licensee may not have actually been deceived is of no consequence.

THE INDICTMENT AND THE STATUTE – COUNT THREE

Count Three of the indictment charges the defendant with violating Title 18 of the United States Code, Section 1028A(a)(1), which makes it a crime to knowingly use or possess a means of identification of another person to make a false statement or furnish a misrepresented identification to a federal firearms licensee in connection with the acquisition of a firearm.

The defendant has entered a plea of not guilty to this allegation in the indictment. The government, therefore, assumes the responsibility of proving each of the essential elements of the crime of knowingly using or possessing a means of identification of

another person to make a false statement or furnishing a misrepresented identification to a federal firearms licensee in connection with the acquisition of a firearm.

The statute under which Count Three of the indictment is brought, Title 18, United States Code, Section 1028A(a)(1), provides that:

Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall be guilty of this offense.

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 charged crime.

**THE ESSENTIAL ELEMENTS FOR COUNT THREE: AGGRAVATED
IDENTITY THEFT**

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

- (1) The defendant knowingly used or possessed a means of identification of another person;
- (2) The defendant did so during and in relation to making a false statement or furnishing a misrepresented identification to a federal firearms licensee in connection with the acquisition of a firearm, the offense charged in Count One; and
- (3) The defendant acted without lawful authority.

FIRST ELEMENT – MEANS OF IDENTIFICATION

The first element the government must prove beyond a reasonable doubt under Count Three is that the defendant knowingly used or possessed a means of identification of another person.

“Knowingly” means to act voluntarily and intentionally and not by mistake or accident. To prove the defendant acted knowingly, it is not necessary for the government to prove that the defendant was aware of the specific law or rule that his conduct may be violating.

The terms “possess” and “use” have their common sense meaning. The government need only prove one of these.

“Means of identification” is defined in the statute as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including . . . any name, social security number, date of birth, official State or government issued driver’s license or identification number; or unique electronic identification number, address, or routing code; or access device.”

In addition, the government must prove beyond a reasonable doubt both that the “means of identification” was that of another, actual person, living or dead, and that the defendant knew that the means of identification was that of another, actual person.

SECOND ELEMENT – DURING AND IN RELATION TO THE FALSE STATEMENT TO ACQUIRE A FIREARM

The second element the government must prove beyond a reasonable doubt under Count Three is that the defendant used or possessed the means of identification of another person during and in relation to the false statement or misrepresented identification offense charged in Count One.

“During and in relation to” means that the defendant’s use or possession of a means of identification of another person had a role in or facilitated, or had the potential of facilitation of, the commission of another offense.

THIRD ELEMENT – WITHOUT LAWFUL AUTHORITY

The third element the government must prove beyond a reasonable doubt under Count Three is that the defendant acted without lawful authority.

To act “without lawful authority” means to use or possess a means of identification without authorization from someone who has authority to give such authorization.

The requirement that the means of identification be used “without lawful authority” does not require that the identification be stolen. Instead, the law prohibits the use of another person’s means of identification, absent the right or permission to act on that person’s behalf in a way that is not contrary to law. The consent of the person whose identification was used has no bearing on the question of whether the means of identification was used without lawful authority. Thus, someone who uses the means of identification with the permission of the person to whom it was issued, or who comes into

lawful possession of the means of identification but then uses it in an unauthorized manner, satisfies this element.

THE INDICTMENT AND THE STATUTE – COUNT FOUR

Count Four of the indictment charges the defendant with violating Title 18 of the United States Code, Section 1028A(a)(1), which makes it a crime to knowingly use or possess a means of identification of another person to make a false statement or furnish a misrepresented identification to a federal firearms licensee in connection with the acquisition of a firearm.

The defendant has entered a plea of not guilty to this allegation in the indictment. The government, therefore, assumes the responsibility of proving each of the essential elements of the crime of knowingly using or possessing a means of identification of another person to make a false statement or furnish a misrepresented identification to a federal firearms licensee in connection with the acquisition of a firearm.

The statute under which Count Four of the indictment is brought, Title 18, United States Code, Section 1028A(a)(1), provides that:

Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall be guilty of this offense.

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 charged crime.

THE ESSENTIAL ELEMENTS FOR COUNT FOUR: AGGRAVATED IDENTITY THEFT

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

- (1) The defendant knowingly used or possessed a means of identification of another person;
- (2) The defendant did so during and in relation to making a false statement or furnishing a misrepresented identification to a federal firearms licensee in connection with the acquisition of a firearm, the offense charged in Count Two; and

(3) The defendant acted without lawful authority.

FIRST ELEMENT – MEANS OF IDENTIFICATION

The first element the government must prove beyond a reasonable doubt under Count Four is that the defendant knowingly used or possessed a means of identification of another person.

“Knowingly” means to act voluntarily and intentionally and not by mistake or accident. To prove the defendant acted knowingly, it is not necessary for the government to prove that the defendant was aware of the specific law or rule that his conduct may be violating.

The terms “possess” and “use” have their common sense meaning. The government need only prove one of these.

“Means of identification” is defined in the statute as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including . . . any name, social security number, date of birth, official State or government issued driver’s license or identification number; or unique electronic identification number, address, or routing code; or access device.”

In addition, the government must prove beyond a reasonable doubt both that the “means of identification” was that of another, actual person, living or dead, and that the defendant knew that the means of identification was that of another, actual person.

SECOND ELEMENT – DURING AND IN RELATION TO THE FALSE STATEMENT TO ACQUIRE A FIREARM

The second element the government must prove beyond a reasonable doubt under Count Four is that the defendant used or possessed the means of identification of another person during and in relation to the false statement or misrepresented identification offense charged in Count Two.

“During and in relation to” means that the defendant’s use or possession of a means of identification of another person had a role in or facilitated, or had the potential of facilitation of, the commission of another offense.

THIRD ELEMENT – WITHOUT LAWFUL AUTHORITY

The third element the government must prove beyond a reasonable doubt under Count Four is that the defendant acted without lawful authority.

To act “without lawful authority” means to use or possess a means of identification without authorization from someone who has authority to give such authorization.

The requirement that the means of identification be used “without lawful authority” does not require that the identification be stolen. Instead, the law prohibits the use of another person’s means of identification, absent the right or permission to act on that person’s behalf in a way that is not contrary to law. The consent of the person whose identification was used has no bearing on the question of whether the means of identification was used without lawful authority. Thus, someone who uses the means of identification with the permission of the person to whom it was issued, or who comes into lawful possession of the means of identification but then uses it in an unauthorized manner, satisfies this element.

THE INDICTMENT AND THE STATUTE – COUNT FIVE

Count Five of the indictment charges the defendant with violating Title 18 of the United States Code, Section 922(g)(1), which prohibits an individual convicted of a crime that is punishable by imprisonment for a term exceeding one year from knowingly possessing a firearm.

The defendant has entered a plea of not guilty to this allegation in the indictment. The government, therefore, assumes the responsibility of proving each of the essential elements of the crime of being a felon in possession of a firearm beyond a reasonable doubt.

The statute under which Count Five of the indictment is brought, Title 18, United States Code, Section 922(g)(1), provides in pertinent part that:

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.

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 charged crime.

THE ESSENTIAL ELEMENTS FOR COUNT FIVE: FELON IN POSSESSION OF A FIREARM

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

- (1) The defendant knowingly possessed the firearm described in the indictment;
- (2) Prior to the defendant possessing the firearm, he had been convicted, in any court, of a crime punishable by imprisonment for a term exceeding one year, as charged;
- (3) At the time the defendant possessed the firearm, he knew that he had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; and
- (4) The possession charged was in or affecting interstate or foreign commerce.

FIRST ELEMENT – KNOWING POSSESSION OF A FIREARM

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

A “firearm” is any weapon that 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 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 under this element even if he possessed it jointly with another. Proof of ownership of the firearm is not required.

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.

SECOND ELEMENT – DEFENDANT’S PRIOR CONVICTION

The second element the government must prove beyond a reasonable doubt under Count Five is that prior to 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 a crime and that this crime was punishable by imprisonment for a term exceeding one year. It has also been stipulated that this conviction occurred prior to the time that the defendant is alleged to have possessed the firearm. You must still consider whether the government has proven this element beyond a reasonable doubt.

I instruct you that the prior conviction that is an element of the charge here and which is not disputed is only to be considered by you for that fact and for nothing else. You are not to consider it for any other purpose or speculate regarding the type of conviction.

THIRD ELEMENT – DEFENDANT’S KNOWLEDGE OF PRIOR CONVICTION

The third element the government must prove beyond a reasonable doubt under Count Five is that, at the time the defendant possessed the firearm, he knew that he had been convicted of a crime punishable by imprisonment for more than one year.

The parties have stipulated that the defendant knew he had been convicted of a crime punishable by imprisonment for a term exceeding one year. It has also been stipulated that the defendant knew during the time that the defendant is alleged to have

possessed the firearm. You must still consider whether the government has proven this element beyond a reasonable doubt.

However, the government is not required to prove that the defendant knew that he was prohibited from possessing a firearm. It is enough if the government establishes beyond a reasonable doubt that the defendant knew he had been convicted of a crime with a potential penalty of imprisonment of more than one year.

FOURTH ELEMENT – FIREARM IN OR AFFECTING INTERSTATE COMMERCE

The fourth element the government must prove beyond a reasonable doubt under Count Five is that the firearm 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 had traveled in interstate or foreign 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 or foreign commerce.

The parties have stipulated that the firearms traveled in interstate or foreign commerce. You must still consider whether the government has proven this element beyond a reasonable doubt.

INDIVIDUAL COUNTS

A separate crime is charged in each count of the indictment. Each charge, and the evidence pertaining to it, should be considered separately by the jury. The fact that you may find the defendant guilty or not guilty as to one of the counts should not control your verdict as to any other count.

UNANIMOUS VERDICT REQUIRED

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

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 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.

RECOLLECTION OF EVIDENCE

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 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.

After the attorneys have been consulted, and the record has been reviewed, I will decide what action to take, and I will tell you my ruling.

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.

If 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 Burlington, in the District of Vermont, this 16th day of April, 2026.



Christina Reiss, Chief Judge
United States District Court