



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

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

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

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

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

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

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

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

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

Single Defendant  
Multiple Crimes (2.01A)

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

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

You are instructed that the Court has taken judicial notice of the fact that the Memphis, Tennessee, is located in the Western District of Tennessee.

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

## Stipulations

While we were hearing evidence, you were told that the government and the defendant agreed, or stipulated to certain facts. This means simply that the government and the defendant both accept these facts. There is no disagreement over these facts, so there was no need for evidence by either side on these points. You may accept these facts, even though nothing more was said about them one way or the other. This, of course, is all for you the jury to decide.

The parties in this case have stipulated that the defendant, prior to the dates alleged in the indictment, has been convicted of a crime punishable by imprisonment for a term exceeding one year.

Number of Witnesses  
Credibility

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

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



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

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

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

You have heard the defendant testify. Earlier, I talked to you about the "credibility" or the "believability" of the witnesses. And I suggested some things for you to consider in evaluating each witness's testimony.

You should consider those same things in evaluating the defendant's testimony.

Law Enforcement  
Witnesses

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the city or county 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 witnesses and to give to that testimony whatever weight, if any, you find it deserves.

You have heard the testimony of Alan Oxley, ATF weapons expert. An expert witness has special knowledge or experience that allows the witness to give an opinion.

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

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

Indictment  
Not Guilty Plea

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

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

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

The indictment reads:

The Indictment and the Statute

Title 18, United States Code, § 922(g)

The indictment charges the defendant with being a person convicted of a crime who possessed a firearm shipped in interstate commerce.

The relevant statute on the subject is 18 U.S.C. § 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 commerce.

Congress was of the view that the ease with which persons, including criminals, were able to acquire firearms was a significant factor in the prevalence of violent crime in the United States, and that federal control over gun dealers and restriction of the distribution of firearms would be helpful to state and local authorities in meeting this problem.

Accordingly, it passed a series of laws designed at giving support to federal, state, and local authorities in meeting this problem.

In your role as jurors, you are not to be concerned with the wisdom or the policy of those laws. If in fact a violation has occurred, the law should be enforced.

In general, these laws include provisions which prohibit certain categories of people from possessing or receiving firearms which were shipped in interstate commerce, and requires any person in the business of dealing in firearms to be licensed.

The government contends that the defendant was within the class of people prohibited from possessing firearms shipped in



interstate commerce because he had been convicted of a crime punishable by more than a year in jail.

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

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

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

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

Defendant's Prior Conviction

The first element the government must prove beyond a reasonable doubt before you can convict is that before the dates 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 government and the defendant have stipulated that before October 29, 2001, and December 21, 2001, the dates the defendant is charged with possessing a firearm, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one (1) year.

Therefore, you may determine that the first element has been satisfied. This, of course, is for you, the jury to decide.

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

that is charged, which is a disputed element of the offenses charged.

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

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

To "possess" means to have something within a person's control. This does not necessarily mean that the defendant must hold it physically, that is, have actual possession of it. As long as the firearm is within the defendant's control, he possesses it. If you find that the defendant either had actual possession of the firearm, or that he had the power and intention to exercise control over the firearm, 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. However, the government is not required to prove that the defendant knew that he was breaking the law.

Next, I want to explain something about possession. The government does not necessarily have to prove that the defendant physically possessed the Mossberg Model 500A, 12-gauge shotgun, as charged in Count 1, the Mossberg Model 590A, 12-gauge shotgun, as charged in Count 2, or the Keltec Model P-40, .40 caliber semi-automatic pistol, as charged in Count 3, for you to find him guilty of this crime. The law recognizes two kinds of possession - actual possession and constructive possession. Either one of these, if proved by the government, is enough to convict.

To establish actual possession, the government must prove that the defendant had direct, physical control over the firearm in the count you are considering, and knew that he had control of it.

To establish constructive possession, the government must prove that the defendant had the right to exercise physical control over the firearm in the count you are considering, and knew he had this right, and that he intended to exercise physical control of the firearm at some time, either directly or through other persons.

For example, if you left something with a friend intending to come back later and pick it up, or intending to send someone else

to pick it up for you, you would have constructive possession of it while it was in the actual possession of your friend.

But understand that just being present where something is located does not equal possession. The government must prove that the defendant had actual or constructive possession of the firearm, and knew that he did, for you to find him guilty of this crime. This, of course, is all for you to decide.



Firearm In or Affecting Commerce

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

This means that the government must prove that at some time prior to the defendant's possession, the firearm had traveled in interstate commerce. It is sufficient for the government to satisfy this element by proving that at anytime prior to the date charged in the indictment, the firearm crossed a state line. It is not necessary that the government prove who carried it across state lines or how it was transported. It is also not necessary for the government to prove that the defendant knew that the firearm had previously traveled in interstate commerce.

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

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

Other Acts of Defendant (7.13)

You have heard testimony that the defendant committed some acts other than the ones charged in the indictment.

You cannot consider this testimony as evidence that the defendant committed the crime that he is on trial for now. Instead, you can only consider it in deciding whether the defendant had the intent to commit the crime. Do not consider it for any other reason.

Remember that the defendant is on trial here only for illegal possession of a firearm, not for the other acts. Do not return a guilty verdict unless the government proves the crime charged beyond a reasonable doubt.

Inferring Required  
Mental State

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

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

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

You may also consider the natural and probable results of any acts that the defendant knowingly did or did not do, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty of Counts 1, 2, and/or 3 of the indictment. The defendant is on trial only for the specific offenses alleged in the indictment.

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

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

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

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

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



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

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

[EXPLAIN VERDICT]

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

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you,

however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.

If you feel a need to see the exhibits which are not being sent to you for further examination, advise the marshal and I will take up your request at that time.

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

You may now retire to begin your deliberations.

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

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UNITED STATES OF AMERICA,                    )  
  )  
      Plaintiff,                                )  
  )  
VS.    )     CR. NO. 02-20052  
  )  
RODNEY T. DUNLAP,                            )  
  )  
  )  
  )  
      Defendant.                                )

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V E R D I C T

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

1. We find the defendant, RODNEY T. DUNLAP, as to Count 1  
\_\_\_\_\_.  
(Guilty)                    or                    (Not Guilty)

2. We find the defendant, RODNEY T. DUNLAP, as to Count 2  
\_\_\_\_\_.  
(Guilty)                    or                    (Not Guilty)

3. We find the defendant, RODNEY T. DUNLAP, as to Count 3

\_\_\_\_\_.

(Guilty)

or

(Not Guilty)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
FOREPERSON

INDEX

USA v. Dunlap  
Case No. 02-20052

CRIMINAL CHARGE BOOK  
[Jury Instructions]

4. General Instruction
5. Reasonable Doubt
6. Evidence (Direct and Circumstantial)
7. Judicial Notice
8. Stipulations
9. Evidence/Number of Witnesses/Credibility
10. Defendants Testimony 7.02A [or] 7.02B
11. Testimony of Law Enforcement Officials
12. Expert Testimony
13. Indictment Not Evidence/Not Guilty Plea
14. Reading of Indictment
15. 18 U.S.C. § 922(g)
  - (a) Purpose of the Statute (35-45)
  - (b) Elements of the Offense (35-46)
  - (c) Defendant's Prior Conviction (35-47)
  - (d) Possession of Firearm (35-48)
16. Constructive Possession (2.10)
17. Joint Possession (2.11)
18. Firearm In or Affecting Commerce (35-49)
19. "On or About" a Certain Date (2.04)
20. "Knowingly" (2.06)
21. Consider Only Specific Offense Charged
22. Disregard Belief as to Guilt or Innocence of Other Persons
23. Verdict Must Be Unanimous/Duty to Discuss With Each Other
24. Instructions/Selection of Foreperson/Verdict Form/Communication of the Court/Submission of Copy of Instructions and Indictment
25. Verdict Form