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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 07-50127-RHB
)	
Plaintiff,)	
)	FINAL
vs.)	JURY INSTRUCTIONS
)	
JASON JOHNSON,)	
)	
Defendant.)	

Attorney for plaintiff:

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INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 3

I have mentioned the word "evidence." The "evidence" in this case consists of the testimony of witnesses, the documents and other things received as exhibits, the facts that have been stipulated – that is, formally agreed to by the parties, the facts, if any, that have been judicially noticed – this is, facts which I say you may, but are not required to, accept as true, even without evidence.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 4

The indictment in this case charges the defendant with two counts: 1) Felon in Possession of a Firearm; and 2) Possession of a Firearm by a Person with a Misdemeanor Conviction. Specifically, the indictment charges:

COUNT I

On or about the 15th day of August, 2007, at Rapid City in the District of South Dakota, defendant Jason Johnson, having been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess firearms, to wit: a Remington, model 870, 12 gauge shotgun, serial number B100633M, and a Stevens, model 87D, .22 caliber rifle, bearing serial number RE22585, which had previously been transported in interstate and foreign commerce, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

COUNT II

On or about the 15th day of August, 2007, at Rapid City in the District of South Dakota, defendant Jason Johnson, having been convicted of a misdemeanor crime of Domestic Violence, did knowingly possess firearms, to wit: a Remington, model 870, 12 gauge shotgun, serial number B100633M, and a Stevens, model 87D, .22 caliber rifle, bearing serial number RE22585, which had previously been transported in interstate and foreign commerce, in violation of 18 U.S.C. §§ 922(g)(9) and 924(a)(2).

The defendant has pleaded not guilty to each of these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

INSTRUCTION NO. 5

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 6

You are instructed that each count in the indictment is to be considered separately, and a verdict is to be returned as to each count. If the evidence fails to establish the defendant's guilt beyond a reasonable doubt on an offense charged against him, then the defendant should have your vote for a not guilty verdict on that offense.

INSTRUCTION NO. 1

FELON IN POSSESSION OF A FIREARM
18 U.S.C. §§ 922(g)(1) and 924(a)(2)

The crime of Felon in Possession of a Firearm, as charged in Count I of the indictment, has three essential elements, which are as follows:

1. The defendant had previously been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
2. That thereafter the defendant knowingly and willfully possessed one or both of the following firearms: a Remington, model 870, 12 gauge shotgun, serial number B100633M, and a Stevens, model 87D, .22 caliber rifle, bearing serial number RE22585; and
3. The firearm(s) was transported across a state line at some time during or before the defendant's possession of it.

For you to find the defendant guilty of this crime, the government must prove all of these essential elements beyond a reasonable doubt; otherwise, you must find the defendant not guilty.

INSTRUCTION NO. 8

**POSSESSION OF A FIREARM BY A PERSON
WITH A MISDEMEANOR CONVICTION**

18 U.S.C. §§ 922(g)(9) and 924(a)(2)

The crime of Possession of a Firearm by a Person with a Misdemeanor

Conviction has three essential elements, which are as follows:

1. The defendant had previously been convicted of a misdemeanor crime, namely domestic violence;
2. That thereafter the defendant knowingly and willfully possessed one or both of the following firearms: a Remington, model 870, 12 gauge shotgun, serial number B100633M, and a Stevens, model 87D, .22 caliber rifle, bearing serial number RE22585; and
3. The firearm(s) was transported across a state line at some time during or before the defendant's possession of it.

For you to find the defendant guilty of this crime, the government must prove all of these essential elements beyond a reasonable doubt; otherwise, you must find the defendant not guilty.

INSTRUCTION NO. 9

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

INSTRUCTION NO. 10

An act is done “knowingly” if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

INSTRUCTION NO. 11

If you have found beyond a reasonable doubt that the firearm in question was manufactured in a state other than South Dakota and that the defendant possessed that firearm in the state of South Dakota then you may, but are not required to, find that it was transported across a state line.

INSTRUCTION NO. 12

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" has been used in these instructions it includes actual as well as constructive possession and also sole as well as joint possession.

INSTRUCTION NO. 13

The government and the defendant have stipulated – that is, they have agreed – that certain facts are as counsel have just stated. You must therefore treat those facts as having been proved.

INSTRUCTION NO. 14

It is defendant's position that he did not participate in any of the alleged offenses in the indictment. If the government does not prove each of the elements of a charge beyond a reasonable doubt, you must find him not guilty of the charge.

INSTRUCTION NO. 15

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 16

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict – whether guilty or not guilty – must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.


Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone – including me – how your votes stand numerically.

Fifth, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. The verdict whether guilty or not guilty must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal that you are ready to return to the courtroom.

Dated this 5th day of May, 2009.


RICHARD H. BATTEY
UNITED STATES DISTRICT JUDGE