

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

JUL 01 2014

[Signature]
CLERK

UNITED STATES OF AMERICA,
Plaintiff,

No. CR 14-40005-01-KES

vs.

LANCE MAJESTIC HOUSE,
Defendant.

**FINAL
INSTRUCTIONS
TO THE JURY**

TABLE OF CONTENTS

FINAL INSTRUCTIONS

NO. 1 – INTRODUCTION 1

NO. 2 – FELON IN POSSESSION OF A FIREARM 2

NO. 3 – DEFENDANT’S PHOTOGRAPH 4

NO. 4 – EYEWITNESS TESTIMONY 5

NO. 5 – EXPERTS 6

NO. 6 – PRESUMPTION OF INNOCENCE AND BURDEN OF
PROOF 7

NO. 7 – REASONABLE DOUBT 8

NO. 8 – IMPEACHMENT 9

NO. 9 – DUTY TO DELIBERATE 10

NO. 10 – DUTY DURING DELIBERATIONS 12

VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION

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

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. **All** instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 – FELON IN POSSESSION OF A FIREARM

The Indictment charges House with “felon in possession of a firearm.” For you to find House guilty of this offense, the prosecution must prove beyond a reasonable doubt *all* of the following three essential elements:

***One*, that House had been convicted of a crime punishable by imprisonment for more than one year;**

You are instructed that the government and the defendant have agreed that House has been convicted of a crime punishable by imprisonment for more than one year under the laws of the United States, and you must consider the first element as proven.

***Two*, that after that, House knowingly possessed a firearm, that is a Bryco Arms, Jennings T380, .380 caliber pistol;**

The term “to . . . possess” means to exercise control or authority over something at a given time. There are several types of possession—actual, constructive, sole, and joint.

The “possession” is considered to be actual when a person knowingly has direct physical control and authority over something. The “possession” is called constructive possession when a person does not have direct physical control over something, but can knowingly control it and intends to control it, sometimes through another person.

The “possession” may be knowingly exercised by one person exclusively, which is called sole possession, or the “possession” may be knowingly exercised jointly, when it is shared by two or more persons.

The term “firearm” means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive or the frame or receiver of any such weapon.

***And three*, that if you find House possessed the firearm, that the firearm was transported across a state line at some time during or before House's possession of it.**

You are instructed that the government and the defendant have agreed that the firearm in question was transported across a state line at some time during or before the time House allegedly possessed it, and you must consider the third element as proven.

For you to find House guilty of felon in possession of a firearm, as charged in the Indictment, the prosecution must prove all of the essential elements of the offense beyond a reasonable doubt. Otherwise, you must find House not guilty of the offense.

FINAL INSTRUCTION NO. 3 – DEFENDANT’S PHOTOGRAPH

Witnesses have testified that they viewed a photograph of House which was shown to them by the police. The police collect pictures of many people from many different sources and for many different purposes. The fact that the police had the defendant’s picture does not mean that he committed this or any other crime, and it must not affect your consideration of this case.

FINAL INSTRUCTION NO. 4 – EYEWITNESS TESTIMONY

The value of identification testimony depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later.

In evaluating such testimony you should consider all of the factors mentioned in these instructions concerning your assessment of the credibility of any witness, and you should also consider, in particular, whether the witness had an adequate opportunity to observe the person in question at the time of the offense. You may consider, in that regard, such matters as the length of time the witness had to observe the person in question, the prevailing conditions at that time in terms of visibility or distance and the like, and whether the witness had known or observed the person at earlier times.

You should also consider whether the identification made by the witness after the offense was the product of his or her own recollection. You may consider, in that regard, the strength of the identification, and the circumstances under which the identification was made, and the length of time that elapsed between the occurrence of the crime and the next opportunity the witness had to see the defendant.

If the identification by the witness may have been influenced by the circumstances under which the defendant was presented to him or her for identification, you should scrutinize the identification with great care.

The government has the burden of proving identity beyond a reasonable doubt. It is not essential that the witness be free from doubt as to the correctness of the identification. However you, the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may find him guilty. If you are not convinced beyond a reasonable doubt that the defendant was the person who possessed the firearm, you must find the defendant not guilty.

FINAL INSTRUCTION NO. 5 – EXPERTS

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

FINAL INSTRUCTION NO. 6 – PRESUMPTION OF INNOCENCE AND
BURDEN OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of an offense charged against him.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that you must find the defendant not guilty of an offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 7 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 8 – IMPEACHMENT

In Preliminary Instruction No. 6, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence, by a showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight you think it deserves. If you conclude that any witness has willfully sworn falsely to any material fact in issue, you may disregard the whole or any part of such witness’s testimony.

You have heard evidence that witness Nate Altman was convicted of crimes. You may use that evidence only to help you decide whether or not to believe this witness and how much weight to give his testimony.

You have heard evidence that House was previously convicted of a crime. You may use that evidence only to help you decide whether to believe his testimony and how much weight to give it. That evidence does not mean that he committed the crime charged here, and you must not use that evidence as any proof of the crime charged in this case.

FINAL INSTRUCTION NO. 9 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all of the evidence bearing on each element before you.
- Take all the time that you feel is necessary.

- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 10 – DUTY DURING DELIBERATIONS

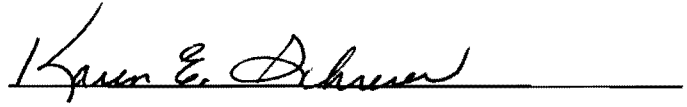
You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty, I will decide what his sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.

- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated July 2, 2014.

A handwritten signature in cursive script, reading "Karen E. Schreier", is written over a solid horizontal line.

Karen E. Schreier
United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LANCE MAJESTIC HOUSE,

Defendant.

No. CR 14-40005-01-KES

We, the Jury, unanimously find the defendant, Lance Majestic House, not guilty or guilty as follows:

(Please return a verdict by placing an "X" or "√" in the spaces provided.)

FELON IN POSSESSION OF A FIREARM		VERDICT
	On the charge of "felon in possession of a firearm," as explained in Final Instruction No. 2, please mark your verdict. Please sign and date the verdict form.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

Date

Foreperson

GOVERNMENT'S PROPOSED INSTRUCTION NO. 8

You may also consider any evidence of flight by the defendant, along with all of the evidence in the case, and you may consider whether this evidence shows a consciousness of guilt and determine the significance to be attached to any such conduct.

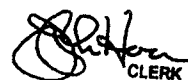
Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to any such evidence are matters exclusively within the province of the jury. In your consideration of the evidence of flight you should consider that there may be reasons for this which are fully consistent with innocence.

Source: United States v. Webster, 442 F.3d 1065, 1067 (8th Circuit)

7-2-14
Refused
K. Schreier

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