

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. DAVID D. LARVIE, JR., Defendant.</p>	<p>3:19-CR-30153-RAL FINAL JURY INSTRUCTIONS</p>
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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. The instructions I am about to give you now are in writing and will be available to you in the jury room.

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.

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, and the facts that have been stipulated—that is, formally agreed to by the parties.

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.

When you were instructed that evidence was received for a limited purpose, you must follow that instruction.

INSTRUCTION NO. 4

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 of any witness 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.

INSTRUCTION NO. 5

The indictment in this case charges the defendant with one crime. The defendant is charged with felon in possession of a firearm and ammunition. The defendant has pleaded not guilty to this charge.

The indictment is simply the document that formally charges the defendant with the crime for which he is on trial. The indictment is not evidence of anything. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate, with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty. This presumption can be overcome only if the United States proved during the trial, beyond a reasonable doubt, each element of the crime charged.

Please remember that only the defendant, not anyone else, is on trial here, and that the defendant is on trial only for the crime charged, not for anything else.

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the United States throughout the trial. Accordingly, the fact that a defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 6

The crime of felon in possession of a firearm and ammunition, as charged in the indictment, has four elements, which are:

***One*, prior to October 25, 2019, the defendant, David D. Larvie, Jr., had been convicted of a crime punishable by imprisonment for a term exceeding one year;**

***Two*, on or about October 25, 2019, the defendant knew he had been convicted of a crime punishable by imprisonment for a term exceeding one year;**

***Three*, on or about October 25, 2019, the defendant knowingly possessed a firearm and/or ammunition in Todd County, South Dakota, that is one or more of the following:**

- a. a Heritage Manufacturing Incorporated, model Rough Rider, .22 Long Rifle caliber, single-action revolver, bearing the serial number T64116; and/or**
- b. Forty-four (44) bullets and three casings containing a mixture of rounds of Aguila brand, .22 Long Rifle caliber, ammunition, and Winchester brand, .22 Long Rifle caliber, ammunition; and**

***Four*, the firearm and ammunition were transported in interstate commerce at some time during or before the defendant's possession of it.**

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.

The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

The phrase "interstate commerce" means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia.

The term "commerce" includes, among other things, travel, trade and transportation.

If you find unanimously that the government has proved these elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in the indictment. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 7

If you have found beyond a reasonable doubt that the firearm and ammunition in question were manufactured in a state or country other than the State of South Dakota and that the defendant possessed that firearm and ammunition in the State of South Dakota, then you may, but are not required to, find that they were transported in interstate commerce. The government is not required to prove that the defendant knew the firearm and ammunition had crossed a state line.

INSTRUCTION NO. 8

The United States and the defendant have stipulated—that is, they have agreed—that the defendant is a convicted felon. You must therefore treat that fact as having been proved.

The mere fact that the defendant entered into this stipulation is not proof that he is guilty of the crime charged of course. It is only evidence on an element of the crime charged in the indictment. You may not consider the defendant's prior conviction as proof that he committed the charged offense in this case.

INSTRUCTION NO. 9

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. 10

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 11

You have heard testimony that the defendant, David D. Larvie, Jr., made a statement to others. It is for you to decide:

First, whether the defendant made the statement.

Second, if so, how much weight you should give it.

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statement may have been made.

INSTRUCTION NO. 12

You have heard testimony from a person described as an expert. Persons who, by knowledge, skill, training, education, or experience, have become an expert 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.

INSTRUCTION NO. 13

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 14

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 United States 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 or court security officer, 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, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a smart phone or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, Snapchat, Instagram, YouTube, or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Sixth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. 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 or court security officer that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. DAVID D. LARVIE, JR., Defendant.</p>	<p>3:19-CR-30153-RAL VERDICT FORM</p>
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find Defendant David D. Larvie, Jr. _____ (fill in either “not guilty” or “guilty”) of the crime of felon in possession of a firearm and ammunition, as charged in the indictment.

[Answer if and only if you answered “guilty” in the blank above.]

We, the jury, find Defendant David D. Larvie, Jr. possessed on October 25, 2019, the following:
[Check only those blanks where you have unanimously agreed.]

- a. _____ a Heritage Manufacturing Incorporated, model Rough Rider, .22 Long Rifle caliber, single-action revolver, bearing the serial number T64116;
- b. _____ Forty-four (44) bullets and three casings containing a mixture of rounds of Aguila brand, .22 Long Rifle caliber, ammunition, and Winchester brand, .22 Long Rifle caliber, ammunition.

Dated September ____, 2020

Foreperson

FORFEITURE INSTRUCTION NO. 1

Members of the jury, you have reached a verdict that the defendant, David D. Larvie, Jr., is guilty of felon in possession of a firearm and ammunition, as charged in the indictment. You now have one more task to perform. I must ask you to render a special verdict concerning property the United States has alleged is subject to forfeiture by the defendant, David D. Larvie, Jr., to the United States. Forfeiture means the defendant loses any ownership interest he has or claims to have in the property, as a part of the penalty for engaging in criminal activity. You need not concern yourself with any other person's interest in the property. I will take care of any such claims. Your only concern is with defendant, David D. Larvie, Jr.'s, interest in the property.

The United States alleges that certain properties should be forfeited because they were involved in the commission of the crime. The particular property alleged to be related to the crime is as follows:

- a. a Heritage Manufacturing Incorporated, model Rough Rider, .22 Long Rifle caliber, single-action revolver, bearing the serial number T64116;
- b. Forty-five (45) rounds of Aguila brand, .22 Long Rifle caliber, ammunition; and
- c. Two (2) rounds of Winchester brand, .22 Long Rifle caliber, ammunition.

You must determine what property, if any, is subject to forfeiture. Property is subject to forfeiture if the United States has proved, by the greater weight of the evidence that the property was involved in the commission of the crime. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. The decision is made by considering all of the evidence on the subject and deciding which evidence you believe. Each party is entitled to the benefit of all evidence received, regardless of who offered the evidence. Greater weight of the evidence is a lesser standard than proof beyond a reasonable doubt. My previous instructions regarding credibility of witnesses and duty to deliberate, apply with respect to this special verdict.

UNITED STATES DISTRICT COURT
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We, the Jury, return the following Special Verdict as to the defendant's interest in each of the properties alleged in the indictment to be subject to forfeiture of the United States:

1. Heritage Manufacturing Incorporated, model Rough Rider, .22 Long Rifle caliber, single-action revolver, bearing the serial number T64116 as alleged in the indictment;

We, the jury, unanimously find this property is subject to forfeiture.

___ YES ___ NO

2. Forty-five (45) rounds of Aguila brand, .22 Long Rifle caliber, ammunition as alleged in the indictment;

We, the jury, unanimously find this property is subject to forfeiture.

___ YES ___ NO

3. Two (2) rounds of Winchester brand, .22 Long Rifle caliber, ammunition as alleged in the indictment;

We, the jury, unanimously find this property is subject to forfeiture.

___ YES ___ NO

DATED this ___ day of September, 2020.

FOREPERSON