

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JORDI RAUL ROGEL-RODAS, a/k/a Jordy Raul, Defendant.	4:21-CR-40058-01-KES FINAL INSTRUCTIONS TO THE JURY
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TABLE OF CONTENTS

FINAL INSTRUCTIONS

NO. 1 – INTRODUCTION	1
NO. 2 – DELIVERING PACKAGE WITH FIREARM WITHOUT WRITTEN NOTICE TO THE CARRIER	2
NO. 3 – TRANSFERRING FIREARM TO OUT OF STATE RESIDENT.....	4
NO. 4 – MAKING A FALSE STATEMENT IN CONNECTION WITH A PURCHASE OF A FIREARM	6
NO. 5 – SMUGGLING GOODS FROM THE UNITED STATES	8
NO. 6 – IMPEACHMENT	9
NO. 7 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF	10
NO. 8 – REASONABLE DOUBT.....	11
NO. 9 – DUTY TO DELIBERATE	12
NO. 10 – DUTY DURING DELIBERATIONS	13

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 – DELIVERING PACKAGE WITH FIREARM
WITHOUT WRITTEN NOTICE TO THE CARRIER

For you to find Jordi Raul Rogel-Rodas guilty of the offense of delivering package with firearm without written notice to the carrier, as charged in Count 1 of the Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, on or about January 6, 2021, Rogel-Rodas knowingly and willfully delivered or caused to be delivered to ServiExpress a package or other container in which there were the following firearms:

1. Rifle, Smith & Wesson, model M&P 15, 5.56 x 45mm caliber, with serial number SY78595;
2. Rifle, F.N.H., model PS-90, 5.7 x 28mm caliber, with serial number FN124643;
3. Shotgun, Winchester, Model 50, 12-gauge, with serial number 48367;
4. Handgun, Glock Inc., model 42, .380 caliber, with serial number AAPB533
5. Handgun, Magnum Research, Inc. (MRI), model Desert Eagle Mark XIX, .50 caliber, with serial number DK0055972;
6. Handgun, North American Arms (NAA), model NAA22, .22 caliber, with serial number E425760; or
7. Handgun, Hermann Weihrauch (HW), model EA/R Windicator, .357 caliber, with serial number 1752587;

An act is done knowingly if the defendant is aware of the act and does not act or fail to act through ignorance, mistake, or accident. 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.

A person acts willfully if he acts knowingly, purposely, and with the intent to do something that the law forbids. That is, a person acts willfully when they act with the purpose to disobey or to disregard the law. A person need not be aware of the specific law or rule that his conduct may be violating, but he must act with the intent to do

something that he knows the law forbids.

“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. The term includes the frame or receiver of any such weapon, or any firearm muffler or firearm silencer.

There are seven separate firearms identified in Count 1. The government need not prove beyond a reasonable doubt that Rogel-Rodas knowingly and willfully delivered or caused to be delivered each of these items. Instead, the government must prove that Rogel-Rodas knowingly and willfully delivered or caused to be delivered at least one of these items. You must unanimously agree as to which item he knowingly and willfully delivered or caused to be delivered.

Two, the package or container was to be shipped or transported from the United States to a foreign nation;

Three, the package or container was to be shipped or transported to a person who was not licensed as a firearms dealer, manufacturer, importer, or collector; and

Four, Rogel-Rodas did not give written notice to ServiExpress that there were those same firearms in the package or container.

For you to find Rogel-Rodas guilty of the offense charged in Count 1 of the Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find Rogel-Rodas not guilty of the offense charged in Count 1 of the Indictment.

FINAL INSTRUCTION NO. 3 – TRANSFERRING FIREARM TO OUT OF STATE
RESIDENT

For you to find Jordi Raul Rogel-Rodas guilty of the offense of transferring firearm to out of state resident, as charged in Count 2 of the Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, on or about January 6, 2021, Rogel-Rodas willfully transferred, sold, traded, gave, transported, or delivered the following firearms to Raul Ronaldo Rogel Letona;

1. Rifle, Smith & Wesson, model M&P 15, 5.56 x 45mm caliber, with serial number SY78595;
2. Rifle, F.N.H., model PS-90, 5.7 x 28mm caliber, with serial number FN124643;
3. Shotgun, Winchester, Model 50, 12-gauge, with serial number 48367;
4. Handgun, Glock Inc., model 42, .380 caliber, with serial number AAPB533;
5. Handgun, Magnum Research, Inc. (MRI), model Desert Eagle Mark XIX, .50 caliber, with serial number DK0055972;
6. Handgun, North American Arms (NAA), model NAA22, .22 caliber, with serial number E425760; or
7. Handgun, Hermann Weihrauch (HW), model EA/R Windicator, .357 caliber, with serial number 1752587;

“Willfully” and “firearm” were defined for you in Final Instruction No. 2, Element One.

There are seven separate firearms identified in Count 2. The government need not prove beyond a reasonable doubt that Rogel-Rodas willfully transferred each of these items. Instead, the government must prove that Rogel-Rodas willfully transferred at least one of these items. You must unanimously agree as to which item he willfully transferred.

Two, neither Rogel-Rodas nor Raul Ronaldo Rogel Letona were licensed as a firearm dealer, importer, manufacturer, or collector of firearms; and

Three, Rogel-Rodas knew or had reasonable cause to believe that Raul Ronaldo Rogel Letona was not a resident of the same state in which Rogel-Rodas resided.

“Reasonable cause to believe” means a person has knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person who knows those facts to conclude that that Raul Ronaldo Rogel Letona was not a resident of the same state in which Rogel-Rodas resided.

For you to find Rogel-Rodas guilty of the offense charged in Count 2 of the Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. Otherwise, you must find Rogel-Rodas not guilty of the offense charged in Count 2 the Indictment.

FINAL INSTRUCTION NO. 4 – MAKING A FALSE STATEMENT IN CONNECTION
WITH A PURCHASE OF A FIREARM

For you to find Jordi Raul Rogel-Rodas guilty of the offense of making a false statement in connection with a purchase of a firearm as charged in Counts 3 through 7 of the Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, on or about the alleged date, Rogel-Rodas acquired or attempted to acquire a firearm from a federally licensed firearms dealer as listed below in the chart;

Two, Rogel-Rodas knowingly made a false or fictitious statement in writing, that was likely to deceive the dealer; and

A statement is “false or fictitious” if it is untrue when made and the person making it knows it is untrue.

A false statement is “likely to deceive” if, under the circumstances, a reasonable person of ordinary prudence would probably be deceived.

Three, the subject matter of the false statement was material to the lawfulness of the sale.

To be material the false statement must have had a natural tendency to influence or was capable of influencing the seller into believing that the firearm could be lawfully sold to the defendant.

Each acquisition or attempted acquisition constitutes a separate offense. The actions charged are set forth as follows:

<u>Count</u>	<u>Date</u>	<u>Firearm Description</u>	<u>Federally Licensed Firearms Dealer</u>
3	On or about April 27, 2020	Winchester, Model 50, 12-gauge shotgun, serial number 48367	Great Plains Pawn
4	On or about June 11, 2020	Glock Inc., model 42, .380 caliber pistol, with serial number AAPB533	Action Pawn and Gun

5	On or about August 3, 2020	Magnum Research, Inc. (MRI), model Desert Eagle Mark XIX, .50 caliber pistol, with serial number DK0055972	Great Plains Pawn
6	On or about October 30, 2020	North American Arms (NAA), model NAA22, .22 caliber revolver, with serial number E425760	Gary's Gun Shop
7	On or about November 24, 2020	Hermann Weihrauch (HW), model EA/R Windicator, .357 caliber revolver, with serial number 1752587	Great Plains Pawn

For you to find Rogel-Rodas guilty of a count as charged in the Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt for that count. Otherwise, you must find Rogel-Rodas not guilty of that count as charged in the Indictment. Keep in mind that each count in Counts 3 through 7 of the Indictment charges a separate crime. You must consider each count separately and return a separate verdict for each count.

FINAL INSTRUCTION NO. 5 – SMUGGLING GOODS FROM THE UNITED STATES

For you to find Jordi Raul Rogel-Rodas guilty of the offense of smuggling goods from the United States as charged in Count 8 of the Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, on or about January 6, 2021, Rogel-Rodas knowingly and willfully exported or sent from the United States firearms;

“Knowingly,” “willfully,” and “firearm” were defined for you in Final Instruction No. 2, Element One.

Two, the exportation or sending was contrary to United States laws that prohibit exporting firearms in the manner alleged in Counts 1 and 2; and

Three, Rogel-Rodas knew the exportation or sending was contrary to law or regulation.

For you to find Rogel-Rodas guilty of the offense charged in Count 8 of the Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. Otherwise, you must find Rogel-Rodas not guilty of the offense charged in Count 8 of the Indictment.

FINAL INSTRUCTION NO. 6 – 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 has said or done something, or has 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, if any, you think it deserves.

Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

FINAL INSTRUCTION NO. 7 – 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 charge, 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 the 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, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

This burden means that you must find the defendant not guilty of the 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. 8 – 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. 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

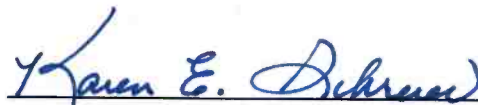
You must follow certain rules while conducting your deliberations and returning your verdict:

- 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 guilty or not guilty. If the defendant is guilty, I will decide what the 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. The verdict, whether guilty or not guilty, must be unanimous. 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 December 21, 2022.

BY THE COURT:

A handwritten signature in blue ink, reading "Karen E. Schreier", is written over a horizontal line.

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE