

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
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CLERK

UNITED STATES OF AMERICA, *
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Plaintiff, *
 *
 *
vs. *
 *
 *
DARREN KYLE STEPP-ZAFFT, *
 *
 *
Defendant. *

CR 16-40015

JURY INSTRUCTIONS

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 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” 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 will 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 have stricken from the record, or have told you to disregard, is not evidence and must not be considered.
4. Anything you have seen or heard about this case outside the courtroom is not evidence, unless I specifically told you otherwise during the trial.

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

INSTRUCTION NO. 4

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.

INSTRUCTION NO. 5

There is nothing particularly different in the way that you should consider the evidence in a trial from that in which any reasonable and careful person would treat any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case for only those purposes for which it has been received and to give such evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions of the Court. Remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence because the burden of proving guilt beyond a reasonable doubt is always assumed by the government.

INSTRUCTION NO. 6

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.

INSTRUCTION NO. 7

If you took notes during the trial, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

INSTRUCTION NO. 8

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reason 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' 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. 9

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.

INSTRUCTION NO. 10

You must presume that the Defendant is innocent of the crimes charged. An indictment is only a formal method for beginning a criminal case. It does not create a presumption of guilt; it is merely an accusation. The fact that a person has been indicted does not create any inference, nor is it evidence, that he is guilty of any crime. The presumption of innocence alone is sufficient to acquit a defendant unless you as jurors are satisfied beyond a reasonable doubt of a defendant's guilt of the crimes charged from all the evidence that has been introduced in the case.

The burden is always upon the Government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. Unless the Government proves, beyond a reasonable doubt, that a defendant committed each and every element of the offense charged against him in the Superseding Indictment, you must find that defendant not guilty of that offense.

There is no burden upon a defendant to prove that he is innocent.

INSTRUCTION NO. 11

A reasonable doubt is a 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 double 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. 12

Count 1 of the Superseding Indictment charges that on or about the 10th day of December, 2015, in Sioux Falls, Minnehaha County, in the District of South Dakota, the defendant, Darren Kyle Stepp-Zafft, knowingly possessed firearms as described in 26 U.S.C. § 5845(a)(4), namely,

1. German Sports Guns, model GSG-5, .22 caliber semi-automatic rifle, serial number A288940;
2. Group Industries model HR4332S, 9mm semi-automatic rifle, serial number 502246;
3. Ruger model .22 Charger, .22 caliber semi-automatic pistol, serial number 490-25801;
4. German Sports Guns, model GSG-5, .22 caliber semi-automatic rifle, serial number A280529;
5. Masterpiece Arms 9mm semi-automatic rifle, serial number B7670;

each of which had either an overall length of less than 26 inches or a barrel with a length of less than 16 inches, and that were not registered to him in the National Firearms Registration and Transfer Record as required by law, all in violation of 26 U.S.C. §§ 5861(d) and 5871.

The Defendant has pleaded not guilty to these charges. There is no burden upon the Defendant to prove that he is innocent of the charges against him.

INSTRUCTION NO. 13

Section 5861(d) of Title 26 of the United States Code provides, in pertinent part, that:

“It shall be unlawful for any person –

(d) to . . . possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record[.]”

INSTRUCTION NO. 14

The crime of possession of an unregistered firearm, as charged in Count 1 of the Superseding Indictment, has five elements, which are:

One, on or about the 10th day of December, 2015, the defendant knew he had one or more of the following firearms in his possession:

1. German Sports Guns, model GSG-5, .22 caliber semi-automatic rifle, serial number A288940;
2. Group Industries model HR4332S, 9mm semi-automatic rifle, serial number 502246;
3. Ruger model .22 Charger, .22 caliber semi-automatic pistol, serial number 490-25801;
4. German Sports Guns, model GSG-5, .22 caliber semi-automatic rifle, serial number A280529;
5. Masterpiece Arms 9mm semi-automatic rifle, serial number B7670.

You must unanimously agree on which firearm or firearms Defendant possessed.

Two, the defendant knew the specific characteristics of those firearms in his possession that required them to be registered;

Three, the firearm or firearms in the defendant's possession were capable of operating as designed or could readily be put into operating condition;

Four, the firearm or firearms in his possession were not registered to the defendant in the National Firearms Registration and Transfer Record; and

Five, the government must prove that the firearm or firearms possessed by the defendant had either an overall length of less than twenty-six inches or a barrel length of less than sixteen inches.

If all of these elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1. Otherwise, you must find the defendant not guilty.

INSTRUCTION NO. 15

Count 2 of the Superseding Indictment charges that on or about the 10th day of December, 2015, in Sioux Falls, Minnehaha County, in the District of South Dakota, the defendant knowingly possessed nine firearms, namely nine improvised explosives devices that qualify as destructive devices as defined in 26 U.S.C. §§ 5845(a)(8) and 5845(f)(3), that were not registered to him in the National Firearms Registration and Transfer Record as required by law, all in violation of 26 U.S.C. §§ 5861(d) and 5871.

The Defendant has pleaded not guilty to these charges. There is no burden upon the Defendant to prove that he is innocent of the charges against him.

INSTRUCTION NO. 16

Section 5845(a)(8) of Title 26 of the United States Code provides, in part, that:

“(a) The term ‘firearm’ means . . . (8) a destructive device.”

Section 5845(f)(3) of Title 26 of the United States Code provides, in part, that:

“(f) The term ‘destructive device’ means . . . (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled.”

INSTRUCTION NO. 17

With regard to the nine objects that are claimed to be grenades as charged in Count 2, the Government must prove each of the following elements beyond a reasonable doubt:

One, on or about the 10th day of December, 2015, the defendant possessed components that could be assembled into a grenade;

Two, the defendant knew the component parts could be assembled into a grenade;

Three, the defendant intended to use the component parts as a grenade; and

Four, the components were not registered to the defendant in the National Firearms Registration and Transfer Record.

The government does not have to prove that the defendant possessed all nine of the improvised explosive devices alleged in Count 2 of the Superseding Indictment. The government must only prove beyond a reasonable doubt each of the elements concerning one or more of the explosive devices alleged. However, you must unanimously agree on which explosive device the defendant possessed.

INSTRUCTION NO. 18

Count 3 of the Superseding Indictment charges that on or about the 10th day of December, 2015, in Sioux Falls, Minnehaha County, in the District of South Dakota, the defendant knowingly possessed two firearms that qualify as silencers as defined in 26 U.S.C. § 5845(a)(7) and 18 U.S.C. § 921(a)(24), namely, two silencers, that were not registered to him in the National Firearms Registration and Transfer Record as required by law, all in violation of 26 U.S.C. §§ 5861(d) and 5871.

The Defendant has pleaded not guilty to these charges. There is no burden upon the Defendant to prove that he is innocent of the charges against him.

INSTRUCTION NO. 19

Section 5845(a)(7) of Title 26 of the United States Code provides, in part, that:

“(a) The term ‘firearm’ means . . . (7) any silencer (as defined in section 921 of Title 18, United States Code)[.]”

Section 921(a)(24) of Title 18 of the United States Code provides, in part, that:

“(a) As used in this chapter –

(24)The terms ‘firearm silencer’ and ‘firearm muffler’ mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.”

INSTRUCTION NO. 20

The crime of possession of unregistered silencers, as charged in Count 3 of the Superseding Indictment, has five elements, which are:

One, on or about the 10th day of December, 2015, the defendant knew he had two firearms that qualify as silencers in his possession;

Two, the defendant knew the firearms were silencers;

Three, the silencers were capable of operating as designed;

Four, the silencers were not registered to the defendant in the National Firearms Registration and Transfer Record; and

Five, the government must prove that the defendant knew the objects were “firearms silencers,” that is, “any device for silencing, muffling, or diminishing the report of a portable firearm.”

The government does not have to prove that the defendant possessed both of the silencers alleged in Count 3 of the Superseding Indictment. The government must only prove beyond a reasonable doubt each of the elements concerning at least one of the silencers alleged. However, you must unanimously agree on which silencer the defendant possessed.

If all of these elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged in Count 3. Otherwise, you must find the defendant not guilty.

INSTRUCTION NO. 21

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 firearm, at any 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 firearm, either directly or through another person or persons, is then in constructive possession of it.

~~Constructive possession of a firearm is established if the person has dominion over the premises where the firearm is located. Constructive possession can also be established by showing that a firearm was seized at the defendant's residence.~~

If one person alone has actual or constructive possession of a firearm, possession is sole. If two or more persons share actual or constructive possession of a firearm, 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. 22

The Superseding Indictment charges that the offenses were committed “on or about” a certain date.

Although it is necessary for the Government to prove beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged in the Superseding Indictment, it is not necessary to the Government to prove that the offenses were committed precisely on the date charged.

INSTRUCTION NO. 23

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I will 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 your verdicts – 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 a 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 vote stands numerically.

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

Finally, the verdict form is simply the written notice of the decisions that you reach in this case. You will take this form to the jury room, and when each of you has agreed upon the

verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal that you are ready to return to the courtroom.