

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CRIMINAL NO. 85-8

UNITED STATES OF AMERICA

PLAINTIFF,

VS:

CLYDE DOUGLAS MARSHALL

DEFENDANT.

COURT'S INSTRUCTION TO THE JURY

MEMBERS OF THE JURY:

YOU HAVE NOW HEARD ALL OF THE EVIDENCE IN THE CASE AS WELL AS THE FINAL ARGUMENTS OF THE LAWYERS FOR THE PARTIES.

IT BECOMES MY DUTY, THEREFORE, TO INSTRUCT YOU ON THE RULES OF THE LAW THAT YOU MUST FOLLOW AND APPLY IN ARRIVING AT YOUR DECISION IN THE CASE.

THE COURT'S INSTRUCTIONS ARE IN THREE SEPARATE PHASES:

FIRST, THE RULES OF LAW GOVERNING THE MANNER IN WHICH THE JURY CONSIDERS THE OFFENSE INSTRUCTIONS:

SECOND, THE OFFENSE INSTRUCTIONS, WHICH IS THE LAW GOVERNING THE OFFENSE CHARGED IN THE INDICTMENT;

THIRD, ARE THE DEFINITIONS OF PARTICULAR WORDS CONTAINED IN THE OFFENSE INSTRUCTIONS AND THE CONDUCT OF THE JURY AFTER THE CASE IS UNDER SUBMISSION TO THE JURY.

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THE COURT'S INSTRUCTIONS TO THE JURY:

DUTY TO FOLLOW INSTRUCTIONS

YOU, AS JURORS, ARE THE JUDGES OF THE FACTS. BUT IN DETERMINING WHAT ACTUALLY HAPPENED IN THIS CASE -- THAT IS, IN REACHING YOUR DECISION AS TO THE FACTS -- IT IS YOUR SWORN DUTY TO FOLLOW THE LAW I AM NOW IN THE PROCESS OF DEFINING FOR YOU.

AND YOU MUST FOLLOW ALL OF MY INSTRUCTIONS AS A WHOLE. YOU HAVE NO RIGHT TO DISREGARD OR GIVE SPECIAL ATTENTION TO ANY ONE INSTRUCTION, OR TO QUESTION THE WISDOM OR CORRECTNESS OF ANY RULE I MAY STATE TO YOU. THAT IS, YOU MUST NOT SUBSTITUTE OR FOLLOW YOUR OWN NOTION OR OPINION AS TO WHAT THE LAW IS OR OUGHT TO BE. IT IS YOUR DUTY TO APPLY THE LAW AS I GIVE IT TO YOU, REGARDLESS OF THE CONSEQUENCES.

BY THE SAME TOKEN IT IS ALSO YOUR DUTY TO BASE YOUR VERDICT SOLELY UPON THE TESTIMONY AND EVIDENCE IN THE CASE, WITHOUT PREJUDICE OR SYMPATHY. THAT WAS THE PROMISE YOU MADE AND THE OATH YOU TOOK BEFORE BEING ACCEPTED BY THE PARTIES AS JURORS IN THIS CASE, AND THEY HAVE THE RIGHT TO EXPECT NOTHING LESS.

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THE COURT'S INSTRUCTIONS TO THE JURY:

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF,
REASONABLE DOUBT

THE INDICTMENT OR FORMAL CHARGE AGAINST A DEFENDANT IS NOT EVIDENCE OF GUILT. INDEED, THE DEFENDANT IS PRESUMED BY THE LAW TO BE INNOCENT. THE LAW DOES NOT REQUIRE A DEFENDANT TO PROVE HIS INNOCENCE OR PRODUCE ANY EVIDENCE AT ALL, AND NO INFERENCE WHATEVER MAY BE DRAWN FROM THE ELECTION OF A DEFENDANT NOT TO TESTIFY. THE GOVERNMENT HAS THE BURDEN OF PROVING HIM GUILTY BEYOND A REASONABLE DOUBT, AND IF IT FAILS TO DO SO YOU MUST ACQUIT HIM.

THUS, WHILE THE GOVERNMENT'S BURDEN OF PROOF IS A STRICT OR HEAVY BURDEN, IT IS NOT NECESSARY THAT THE DEFENDANT'S GUILT BE PROVED BEYOND ALL POSSIBLE DOUBT. IT IS ONLY REQUIRED THAT THE GOVERNMENT'S PROOF EXCLUDE ANY "REASONABLE DOUBT" CONCERNING THE DEFENDANT'S GUILT. A "REASONABLE DOUBT" IS A REAL DOUBT, BASED UPON REASON AND COMMON SENSE AFTER CAREFUL AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE IN THE CASE.

PROOF BEYOND A REASONABLE DOUBT, THEREFORE, IS PROOF OF SUCH A CONVINCING CHARACTER THAT YOU WOULD BE WILLING TO RELY AND ACT UPON IT

WITHOUT HESITATION IN THE MOST IMPORTANT OF YOUR OWN AFFAIRS. IF YOU
ARE CONVINCED THAT THE ACCUSED HAS BEEN PROVED GUILTY BEYOND REASONABLE
DOUBT, SAY SO. IF YOU ARE NOT CONVINCED, SAY SO.

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THE COURT'S INSTRUCTIONS TO THE JURY:

EVIDENCE -- EXCLUDING ARGUMENT OF COUNSEL
AND COMMENT OF COURT

AS STATED EARLIER IT IS YOUR DUTY TO DETERMINE THE FACTS, AND IN SO DOING YOU MUST CONSIDER ONLY THE EVIDENCE I HAVE ADMITTED IN THE CASE. THE TERM "EVIDENCE" INCLUDES THE SWORN TESTIMONY OF THE WITNESSES AND THE EXHIBITS ADMITTED IN THE RECORD.

REMEMBER THAT ANY STATEMENTS, OBJECTIONS OR ARGUMENTS MADE BY THE LAWYERS ARE NOT EVIDENCE IN THE CASE. THE FUNCTION OF THE LAWYERS IS TO POINT OUT THOSE THINGS THAT ARE MOST SIGNIFICANT OR MOST HELPFUL TO THEIR SIDE OF THE CASE, AND IN SO DOING TO CALL YOUR ATTENTION TO CERTAIN FACTS OR INFERENCES THAT MIGHT OTHERWISE ESCAPE YOUR NOTICE. IN THE FINAL ANALYSIS, HOWEVER, IT IS YOUR OWN RECOLLECTION AND INTERPRETATION OF THE EVIDENCE THAT CONTROLS IN THE CASE. WHAT THE LAWYERS SAY IS NOT BINDING UPON YOU. ALSO, DURING THE COURSE OF A TRIAL I OCCASIONALLY MAKE COMMENTS TO THE LAWYERS, OR ASK QUESTIONS OF A WITNESS, OR ADMONISH A WITNESS CONCERNING THE MANNER IN WHICH HE SHOULD RESPOND TO THE QUESTIONS OF COUNSEL. DO NOT ASSUME FROM ANYTHING I MAY HAVE SAID THAT I HAVE ANY OPINION CONCERNING ANY OF THE ISSUES IN THIS

CASE. EXCEPT FOR MY INSTRUCTIONS TO YOU ON THE LAW, YOU SHOULD
DISREGARD ANYTHING I MAY HAVE SAID DURING THE TRIAL IN ARRIVING AT YOUR
OWN FINDINGS AS TO THE FACTS.

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THE COURT'S INSTRUCTIONS TO THE JURY:

EVIDENCE -- INFERENCES -- DIRECT
AND CIRCUMSTANTIAL

SO, WHILE YOU SHOULD CONSIDER ONLY THE EVIDENCE IN THE CASE, YOU ARE PERMITTED TO DRAW SUCH REASONABLE INFERENCES FROM THE TESTIMONY AND EXHIBITS AS YOU FEEL ARE JUSTIFIED IN THE LIGHT OF COMMON EXPERIENCE. IN OTHER WORDS, YOU MAY MAKE DEDUCTIONS AND REACH CONCLUSIONS WHICH REASON AND COMMON SENSE LEAD YOU TO DRAW FROM THE FACTS WHICH HAVE BEEN ESTABLISHED BY THE TESTIMONY AND EVIDENCE IN THE CASE.

YOU MAY ALSO CONSIDER EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. "DIRECT EVIDENCE" IS THE TESTIMONY OF ONE WHO ASSERTS ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYE WITNESS. "CIRCUMSTANTIAL EVIDENCE" IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING EITHER THE GUILT OR INNOCENCE OF THE DEFENDANT. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. IT REQUIRES ONLY THAT YOU WEIGH ALL OF THE EVIDENCE AND BE CONVINCED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT BEFORE HE CAN BE CONVICTED.

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THE COURT'S INSTRUCTIONS TO THE JURY:

CREDIBILITY OF WITNESSES

NOW, I HAVE SAID THAT YOU MUST CONSIDER ALL OF THE EVIDENCE. THIS DOES NOT MEAN, HOWEVER, THAT YOU MUST ACCEPT ALL OF THE EVIDENCE AS TRUE OR ACCURATE.

YOU ARE THE SOLE JUDGES OF THE CREDIBILITY OR "BELIEVABILITY" OF EACH WITNESS AND THE WEIGHT TO BE GIVEN TO HIS TESTIMONY. IN WEIGHING THE TESTIMONY OF A WITNESS YOU SHOULD CONSIDER HIS RELATIONSHIP TO THE GOVERNMENT OR THE DEFENDANT; HIS INTEREST, IF ANY, IN THE OUTCOME OF THE CASE; HIS MANNER OF TESTIFYING; HIS OPPORTUNITY TO OBSERVE OR ACQUIRE KNOWLEDGE CONCERNING THE FACTS ABOUT WHICH HE TESTIFIED; HIS CANDOR, FAIRNESS AND INTELLIGENCE; AND THE EXTENT TO WHICH HE HAS BEEN SUPPORTED OR CONTRADICTED BY OTHER CREDIBLE EVIDENCE. YOU MAY, IN SHORT, ACCEPT OR REJECT THE TESTIMONY OF ANY WITNESS IN WHOLE OR IN PART.

ALSO, THE WEIGHT OF THE EVIDENCE IS NOT NECESSARILY DETERMINED BY THE NUMBER OF WITNESSES TESTIFYING AS TO THE EXISTENCE OR NON-EXISTENCE OF ANY FACT. YOU MAY FIND THAT THE TESTIMONY OF A SMALLER NUMBER OF WITNESSES AS TO ANY FACT IS MORE CREDIBLE THAN THE TESTIMONY OF A LARGER NUMBER OF WITNESSES TO THE CONTRARY.

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THE COURT'S INSTRUCTIONS TO THE JURY:

INCONSISTENT STATEMENT ONLY

A WITNESS MAY BE DISCREDITED OR "IMPEACHED" BY CONTRADICTORY EVIDENCE, BY A SHOWING THAT HE 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, WHICH IS INCONSISTENT WITH THE WITNESS' PRESENT TESTIMONY.

IF YOU BELIEVE THAT ANY WITNESS HAS BEEN SO IMPEACHED, THEN IT IS YOUR EXCLUSIVE PROVINCE TO GIVE THE TESTIMONY OF THAT WITNESS SUCH CREDIBILITY OR WEIGHT, IF ANY, AS YOU MAY THINK IT DESERVES.

AS STATED EARLIER, A DEFENDANT HAS A RIGHT NOT TO TESTIFY. IF A DEFENDANT DOES TESTIFY, HOWEVER, HIS TESTIMONY SHOULD BE WEIGHED AND CONSIDERED, AND HIS CREDIBILITY DETERMINED, IN THE SAME WAY AS THAT OF ANY OTHER WITNESS.

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THE COURT'S INSTRUCTIONS TO THE JURY:

ON OR ABOUT --KNOWINGLY

YOU WILL NOTE THAT THE INDICTMENT CHARGES THAT THE OFFENSE WAS COMMITTED "ON OR ABOUT" A CERTAIN DATE. THE PROOF NEED NOT ESTABLISH WITH CERTAINTY THE EXACT DATE OF THE ALLEGED OFFENSE. IT IS SUFFICIENT IF THE EVIDENCE IN THE CASE ESTABLISHES BEYOND A REASONABLE DOUBT THAT THE OFFENSE WAS COMMITTED ON A DATE REASONABLY NEAR THE DATE ALLEGED.

THE WORD "KNOWINGLY," AS THAT TERM HAS BEEN USED FROM TIME TO TIME IN THESE INSTRUCTIONS, MEANS THAT THE ACT WAS DONE VOLUNTARILY AND INTENTIONALLY AND NOT BECAUSE OF MISTAKE OR ACCIDENT.

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THE COURT'S INSTRUCTIONS TO THE JURY:

CAUTION -- PUNISHMENT

I CAUTION YOU, MEMBERS OF THE JURY, THAT YOU ARE HERE TO DETERMINE THE GUILT OR INNOCENCE OF THE ACCUSED FROM THE EVIDENCE IN THIS CASE. THE DEFENDANT IS NOT ON TRIAL FOR ANY ACT OR CONDUCT OR OFFENSE NOT ALLEGED IN THE INDICTMENT. NEITHER ARE YOU CALLED UPON TO RETURN A VERDICT AS TO THE GUILT OR INNOCENCE OF ANY OTHER PERSON OR PERSONS NOT ON TRIAL AS A DEFENDANT IN THIS CASE.

ALSO, THE PUNISHMENT PROVIDED BY LAW FOR THE OFFENSE CHARGED IN THE INDICTMENT IS A MATTER EXCLUSIVELY WITHIN THE PROVINCE OF THE COURT OR JUDGE, AND SHOULD NEVER BE CONSIDERED BY THE JURY IN ANY WAY, IN ARRIVING AT AN IMPARTIAL VERDICT AS TO THE GUILT OR INNOCENCE OF THE ACCUSED.

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THE COURT'S INSTRUCTIONS TO THE JURY:

IMPEACHMENT

THE FACT THAT A WITNESS HAS PREVIOUSLY BEEN CONVICTED OF A FELONY, OR A CRIME INVOLVING DISHONESTY OR FALSE STATEMENT, IS ALSO A FACTOR YOU MAY CONSIDER IN WEIGHING THE CREDIBILITY OF THAT WITNESS. THE FACT OF SUCH A CONVICTION DOES NOT NECESSARILY DESTROY THE WITNESS' CREDIBILITY, BUT IS ONE OF THE CIRCUMSTANCES YOU MAY TAKE INTO ACCOUNT IN DETERMINING THE WEIGHT TO BE GIVEN TO HIS TESTIMONY.

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THE COURT'S INSTRUCTIONS TO THE JURY:

DUTY TO DELIBERATE

ANY VERDICT MUST REPRESENT THE CONSIDERED JUDGMENT OF EACH JUROR. IN OR TO RETURN A VERDICT, IT IS NECESSARY THAT EACH JUROR AGREE THERE-TO. IN OTHER WORDS, YOUR VERDICT MUST BE UNANIMOUS.

IT IS YOUR DUTY AS JURORS, TO CONSULT WITH ONE ANOTHER, AND TO DELIBERATE IN AN EFFORT TO REACH AGREEMENT IF YOU CAN DO SO WITHOUT VIOLENCE TO INDIVIDUAL JUDGMENT. EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT ONLY AFTER AN IMPARTIAL CONSIDERATION OF THE EVIDENCE IN THE CASE WITH YOUR FELLOW JURORS. IN THE COURSE OF YOUR DELIBERATIONS, DO NOT HESITATE TO RE-EXAMINE YOUR OWN VIEWS AND CHANGE YOUR OPINION IF CONVINCED IT IS ERRONEOUS. BUT DO NOT SURRENDER YOUR HONEST CONVICTION AS TO THE WEIGHT OR EFFECT OF THE EVIDENCE SOLELY BECAUSE OF THE OPINION OF YOUR FELLOW JURORS, OR FOR THE MERE PURPOSE OF RETURNING A VERDICT.

REMEMBER AT ALL TIMES, YOU ARE NOT PARTISANS. YOU ARE JUDGES--JUDGES OF THE FACTS. YOUR SOLE INTEREST IS TO SEEK THE TRUTH FROM THE EVIDENCE IN THE CASE.

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ON OR ABOUT

YOU WILL NOTE THAT THE INDICTMENT CHARGES THAT THE OFFENSE WAS COMMITTED "ON OR ABOUT" A CERTAIN DATE. THE PROOF NEED NOT ESTABLISH WITH CERTAINTY THE EXACT DATE OF THE ALLEGED OFFENSE. IT IS SUFFICIENT IF THE EVIDENCE IN THE CASE ESTABLISHES BEYOND A REASONABLE DOUBT THAT THE OFFENSE WAS COMMITTED ON A DATE REASONABLY NEAR THE DATE ALLEGED.

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POSSESSION OF FIREARM AFFECTING INTERSTATE COMMERCE
(OFFENSE INSTRUCTION)

IT IS CHARGED IN THE INDICTMENT THAT ON OR ABOUT THE 21ST DAY OF JANUARY, 1982, IN JOHNSON COUNTY, KENTUCKY, IN THE EASTERN DISTRICT OF KENTUCKY, CLYDE DOUGLAS MARSHALL, HAVING BEEN CONVICTED ON OR ABOUT JANUARY 24, 1973, IN THE COURT OF COMMON PLEAS, CLARK COUNTY, OHIO, OF THE FELONY OFFENSE OF ROBBERY, DID POSSESS IN COMMERCE AND AFFECTING COMMERCE, A FIREARM, TO WIT, A SMITH AND WESSON, .38 CALIBER PISTOL, IN THAT THE SAID FIREARM HAD PREVIOUSLY TRAVELED IN INTERSTATE COMMERCE, ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, APPENDIX I, SECTION 1202(A)(1).

THE INDICTMENT CHARGES THE DEFENDANT WITH POSSESSION OF A FIREARM IN COMMERCE OR AFFECTING COMMERCE, HAVING BEEN PREVIOUSLY CONVICTED OF A FELONY.

TITLE 18, UNITED STATES CODE, APPENDIX, SECTION 1202(A)(1) READS IN PART:

(A) "ANY PERSON WHO -----

- 1) HAS BEEN CONVICTED BY A COURT OF THE UNITED STATES OR OF A STATE OR ANY POLITICAL SUBDIVISION THEREOF OF A FELONY ---- AND WHO RECEIVES, POSSESSES, OR TRANSPORTS IN COMMERCE OR AFFECTING COMMERCE" --- SHALL BE GUILTY OF AN OFFENSE AGAINST THE UNITED STATES.

"COMMERCE" MEANS TRAVEL, TRADE, TRAFFIC, COMMERCE, TRANSPORTATION, OR COMMUNICATION AMONG THE SEVERAL STATES.

"FELONY" MEANS ANY OFFENSE PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR.

"FIREARM" MEANS ANY WEAPON, INCLUDING A HANDGUN, RIFLE, OR SHOTGUN, WHICH IS DESIGNED TO EXPEL A PROJECTILE BY THE ACTION OF AN EXPLOSIVE.

THE ESSENTIAL ELEMENTS OF SECTION 1202(A)(1) ARE:

- 1) THAT DEFENDANT HAS PREVIOUSLY BEEN CONVICTED OF A FELONY,
- 2) THAT DEFENDANT KNOWINGLY POSSESSED OR RECEIVED A FIREARM,
AND
- 3) THAT THE FIREARM WAS IN COMMERCE OR AFFECTING COMMERCE.

SPECIFIC INTENT IS NOT AN ELEMENT OF THIS OFFENSE. IN OTHER WORDS, THE DEFENDANT DOES NOT HAVE TO KNOW THAT IT WAS UNLAWFUL FOR HIM TO POSSESS A FIREARM.

THE GOVERNMENT MUST SHOW THAT THE DEFENDANT'S POSSESSION OF THE FIREARM WAS IN OR AFFECTING COMMERCE. COMMERCE MEANS TRAVEL, TRADE, TRAFFIC, COMMERCE, TRANSPORTATION OR COMMUNICATION AMONG THE SEVERAL STATES. YOU MUST DETERMINE WHETHER POSSESSION OF THE FIREARM AT THE TIME AND PLACE ALLEGED IN THE INDICTMENT HAD A DEMONSTRATED CONNECTION OR LINK WITH INTERSTATE COMMERCE.

IF YOU DO NOT FIND BEYOND A REASONABLE DOUBT THAT THE POSSESSION OF A FIREARM BY THE DEFENDANT AT THE TIME AND PLACE AS ALLEGED IN THE INDICTMENT WAS IN OR AFFECTED COMMERCE OR HAD A DEMONSTRATED CONNECTION OR LINK WITH INTERSTATE COMMERCE, THEN THE GOVERNMENT HAS NOT MET ITS BURDEN OF PROOF ON THIS ISSUE AND YOU MUST FIND THE DEFENDANT NOT GUILTY.

THE GOVERNMENT MAY MEET ITS BURDEN OF PROVING THAT THE POSSESSION OF THE FIREARM WAS IN OR THAT IT AFFECTED COMMERCE IF IT IS DEMONSTRATED THAT THE FIREARM POSSESSED BY A CONVICTED FELON HAD PREVIOUSLY TRAVELED IN INTERSTATE COMMERCE.

IT IS NOT NECESSARY FOR THE GOVERNMENT TO SHOW THAT THE DEFENDANT MOVED THE GUNS IN INTERSTATE COMMERCE. THE UNITED STATES MAY SHOW THAT THE FIREARMS HAD BEEN TRANSPORTED IN INTERSTATE COMMERCE IF IT SHOWS BEYOND A REASONABLE DOUBT THAT THE FIREARMS WERE MANUFACTURED OUTSIDE THE STATE OF KENTUCKY, THE INESCAPABLE CONCLUSION BEING THAT THE FIREARMS HAD TO CROSS STATE LINES IN ORDER TO GET INTO KENTUCKY.

THE LAW RECOGNIZES TWO KINDS OF POSSESSION: ACTUAL POSSESSION AND CONSTRUCTIVE 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, KNOWINGLY 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 A THING. POSSESSION IS JOINT.

YOU MAY FIND THAT THE ELEMENT OF POSSESSION AS THAT TERM IS USED IN THESE INSTRUCTIONS IS PRESENT IF YOU FIND BEYOND REASONABLE DOUBT THAT THE DEFENDANT HAD ACTUAL OR CONSTRUCTIVE POSSESSION, EITHER ALONE OR JOINTLY WITH OTHERS.

THE JURY IS INSTRUCTED THAT THE GOVERNMENT IS NOT OBLIGATED TO PROVE THAT THE DEFENDANT, AT THE TIMES AND PLACES CONTAINED IN THE EVIDENCE, KNEW HIS CONDUCT VIOLATED THE LAWS OF THE UNITED STATES. HOWEVER, THE GOVERNMENT MUST PROVE, TO THE EXCLUSION OF A REASONABLE DOUBT, THAT THE ACTS OF THE DEFENDANT, AT SUCH TIMES AND PLACE, WERE KNOWINGLY.

AN ACT OR A FAILURE TO ACT IS "KNOWINGLY" DONE, IF DONE VOLUNTARILY AND INTENTIONALLY, AND NOT BECAUSE OF MISTAKE OR ACCIDENT OR OTHER INNOCENT REASON.

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THE COURT'S INSTRUCTIONS TO THE JURY:

VERDICT

UPON RETIRING TO THE JURY ROOM YOU SHOULD FIRST SELECT ONE OF YOUR NUMBER TO ACT AS YOUR FOREPERSON WHO WILL PRESIDE OVER YOUR DELIBERATIONS AND WILL BE YOUR SPOKESMAN HERE IN COURT. FORMS OF VERDICTS HAVE BEEN PREPARED FOR YOUR CONVENIENCE.

[EXPLAIN VERDICTS]

YOU WILL TAKE THE VERDICT FORMS TO THE JURY ROOM AND WHEN YOU HAVE REACHED UNANIMOUS AGREEMENT AS TO YOUR VERDICTS, YOU WILL HAVE YOUR FOREPERSON FILL IN, DATE AND SIGN THEM, AND THEN RETURN TO THE COURTROOM.

IF, DURING YOUR DELIBERATIONS, YOU SHOULD DESIRE TO COMMUNICATE WITH THE COURT, PLEASE REDUCE YOUR MESSAGE OR QUESTION TO WRITING SIGNED BY THE FOREPERSON, AND PASS THE NOTE TO THE MARSHAL WHO WILL BRING IT TO MY ATTENTION. I WILL THEN RESPOND AS PROMPTLY AS POSSIBLE, EITHER IN WRITING OR BY HAVING YOU RETURNED TO THE COURTROOM SO THAT I CAN ADDRESS YOU ORALLY. I CAUTION YOU, HOWEVER, WITH REGARD TO ANY MESSAGE OR QUESTION YOU MIGHT SEND, THAT YOU SHOULD NEVER STATE OR SPECIFY YOUR NUMERICAL DIVISION AT THE TIME.