

UNITED STATES OF AMERICA
v.
HOLLIS WAYNE FINCHER
4:03CR40003-001

GOVERNMENT’S PROPOSED INSTRUCTION NO. __

8th Cir. No. 1.01

**1.01 GENERAL; NATURE OF CASE;
NATURE OF INDICTMENT; BURDEN
OF PROOF; PRESUMPTION OF
INNOCENCE; DUTY OF JURY;**

Ladies and gentlemen: I shall take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I shall give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed.

This is a criminal case, brought against the defendant by the United States government. The defendant is charged with one count of unlawful possession of a firearm and one count of possession of a firearm not registered in the National Firearms and Transfer Record. These charge are set forth in what is called an indictment, which reads as follows:

COUNT 1

On or about the 8th day of November, 2006, in the Western District of Arkansas, Fayetteville Division, the defendant **HOLLIS WAYNE FINCHER**, knowingly possessed a machine gun, namely, any one or more of the following: (1) A homemade Browning model 1919 .308 caliber machine gun, further described as bearing the following inscription: “Browning 1919 Borne by Hollis Wayne Fincher Black Oak Arkansas Amendment 2 is invoked SN61505 Non-commercial,”

(2) a homemade Sten type design machine gun 9 mm, further described as having camouflage painting, and (3) a homemade Browning model 1919 .308 caliber machine gun, further described as bearing the following inscription: “W Fincher Non-commercial Amendment 2 is invoked Black Oak AR 7001;” in violation of Title 18, United States Code, Sections 922(o) and 924(a)(2).

Government's Proposed Instruction No. ____ (Page 2)

COUNT 2

On or about the 8th day of November, 2006, in the Western District of Arkansas, Fayetteville Division, the defendant **HOLLIS WAYNE FINCHER**, knowingly possessed a firearm, namely, a sawed off shotgun, further described as a Remington model 870 express magnum 12 gauge short barreled shotgun, serial number A861076M, not registered to him in the National Firearms Registration and Transfer Record, in violation of Title 26 U.S.C. §§ 5841, 5861(d) and 5871.

You should understand that an indictment is simply an accusation. It is not evidence of anything. The defendant has pleaded not guilty, and is presumed to be innocent unless and until proved guilty beyond a reasonable doubt.

It will be your duty to decide from the evidence whether the defendant is guilty or not guilty of the offenses charged. From the evidence, you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

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.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

Finally, please remember that only the defendant, not anyone else, is on trial here, and that this defendant is on trial only for the offenses charged, not for anything else.

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

8th Cir. No. 1.02

**1.02 ELEMENTS OF THE OFFENSE
(PRELIMINARY)**

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crimes charged, which the Government must prove beyond a reasonable doubt to make its case:

Count 1: The crime of possession of a machine gun has three essential elements, which are:

One, the defendant knew he had the firearm in his possession;

Two, the defendant knew the firearm was any one or more of the following: (1) A homemade Browning model 1919 .308 caliber machine gun, further described as bearing the following inscription: "Browning 1919 Borne by Hollis Wayne Fincher Black Oak Arkansas Amendment 2 is invoked SN61505 Non-commercial," (2) a homemade Sten type design machine gun 9 mm, further described as having camouflage painting, and (3) a homemade Browning model 1919 .308 caliber machine gun, further described as bearing the following inscription: "W Fincher Non-commercial Amendment 2 is invoked Black Oak AR 7001;"

Three, the firearm was capable of operating as designed.

Count 2: The crime of possession of a firearm not registered in the National Firearms Registration and Transfer Record has four essential elements, which are:

One, the defendant knew he had the firearm in his possession;

Two, the defendant knew the firearm was a sawed off shotgun further described as a Remington model 870 express magnum 12 gauge short barreled shotgun, serial number A861076M;

Three, the firearm was capable of operating as designed; and

Government's Proposed Instruction No. ____ (Page 2)

Four, the firearm was not registered to the defendant in the National Firearms Registration and Transfer Record.

You should understand, however, that what I have just given you is only a preliminary outline. At the end of the trial I shall give you a final instruction on these matters. If there is any difference between what I just told you, and what I tell you in the instructions I give you at the end of the trial, the instructions given at the end of the trial must govern you.

GOVERNMENT’S PROPOSED INSTRUCTION NO. ____

8th Cir. No. 1.03

1.03 EVIDENCE; LIMITATIONS

I have mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits, any facts that have been stipulated--that is, formally agreed to by the parties, and any facts that have been judicially noticed--that is, facts which I say you may, but are not required to, accept as true, even without evidence.

Certain things are not evidence. I shall list those things 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 sustain 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 strike from the record, or tell you to disregard, is not evidence and must not be considered.

4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

Government's Proposed Instruction No. __ (Page 2)

Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

8th Cir. No. 1.05

1.05 CREDIBILITY OF WITNESSES

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 other evidence that you believe.

GOVERNMENT'S PROPOSED INSTRUCTION NO. __

8th Cir. No. 1.08

1.08 CONDUCT OF THE JURY

Finally, to insure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case -- you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side -- even if it is simply to pass the time of day -- an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. [In fact, until the trial is over I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but if there are you might inadvertently find yourself reading or listening

Government's Proposed Instruction No. __ (Page 2)

to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research or make any investigation about the case on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

GOVERNMENT’S PROPOSED INSTRUCTION NO. ____

8th Cir. No. 1.09

**1.09 PRELIMINARY INSTRUCTIONS
BEFORE OPENING STATEMENTS
“OUTLINE OF TRIAL”**

The trial will proceed in the following manner:

First, the government attorney will make an opening statement. Next the defendant’s attorney may, but does not have to, make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The government will then present its evidence and counsel for defendant may cross-examine. Following the government’s case, the defendant may, but does not have to, present evidence, testify or call other witnesses. If the defendant calls witnesses, the government counsel may cross-examine them.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. The court will instruct you further on the law. After that you will retire to deliberate on your verdict.

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

8th Cir. 2.05

2.05 WIRETAP OR OTHER TAPE-RECORDED EVIDENCE

You have heard tape recordings of conversations. These conversations were legally recorded, and you may consider the recordings just like any other evidence.

2.06 TRANSCRIPT OF TAPE-RECORDED CONVERSATION

As you have also heard, there is a typewritten transcript of the tape recording I just mentioned. That transcript also undertakes to identify the speakers engaged in the conversation.

You are permitted to have the transcript for the limited purpose of helping you follow the conversation as you listen to the tape recording, and also to help you keep track of the speakers. The transcript, however, is not evidence. The tape recording itself is the primary evidence of its own contents.

Differences in meaning between what you hear in the recording and read in the transcript may be caused by such things as the inflection in a speaker's voice. You should, therefore, rely on what you hear rather than what you read when there is a difference.

2.08 DEFENDANT’S PRIOR SIMILAR ACTS

You have heard a certain category of evidence called “similar acts” evidence. Here, that evidence is that the defendant possessed additional machine guns and other illegal firearms. You may not use this “similar acts” evidence to decide whether the defendant carried out the acts involved in the crime charged in the indictment. In order to consider “similar acts” evidence at all, you must first unanimously find beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crime charged in the indictment. If you make the finding, then you may consider the “similar acts” evidence to decide the defendant’s knowledge or absence of mistake or accident for which evidence has been admitted. “Similar acts” evidence must be proven by a preponderance of the evidence; that is, you must find that the evidence is more likely true than not true. This is a lower standard than proof beyond a reasonable doubt. If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proven by a preponderance of the evidence, then you shall disregard such evidence.

Remember, even if you find that the defendant may have committed similar acts in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. The defendant is on trial only for the crime[s] charged, and you may consider the evidence of prior acts only on the issue of the defendant’s knowledge or absence of mistake or accident for which evidence has been admitted.

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

8th Cir. No. 3.01

3.01 INTRODUCTION

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 [as well as those I gave you earlier] 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.

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

8th Cir. No. 3.02; D&B 18.10 modified

3.02: DUTY OF JURY

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.

Nothing said in these instructions, and nothing in the form of verdict prepared for your convenience, is to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

3.03: EVIDENCE; LIMITATIONS

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 -- this 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.

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

Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

8th Cir. No. 3.04

3.04: CREDIBILITY OF WITNESSES

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 mis-recollection 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.

GOVERNMENT’S PROPOSED INSTRUCTION NO. __

8th Circuit No. 3.06

**3.06 DESCRIPTION OF CHARGES; INDICTMENT NOT EVIDENCE;
PRESUMPTION OF INNOCENCE; BURDEN OF PROOF
(SINGLE DEFENDANT, MULTIPLE COUNTS)**

The indictment in this case charges the defendant with two different crimes.

Under Count 1, the indictment charges that the defendant committed the crime of knowingly possessing a machine gun, namely any one or more of the following: (1) A homemade Browning model 1919 .308 caliber machine gun, further described as bearing the following inscription: “Browning 1919 Borne by Hollis Wayne Fincher Black Oak Arkansas Amendment 2 is invoked SN61505 Non-commercial,” (2) a homemade Sten type design machine gun 9 mm, further described as having camouflage painting, and (3) a homemade Browning model 1919 .308 caliber machine gun, further described as bearing the following inscription: “W Fincher Non-commercial Amendment 2 is invoked Black Oak AR 7001;”

Under Count 2, the indictment charges that the defendant committed the crime of knowingly possessing a firearm, namely a sawed off shotgun, further described as a Remington model 870 express magnum 12 gauge short barreled shotgun, serial number A861076M, not registered to him in the National Firearms Registration and Transfer Record. The defendant has pleaded not guilty to each of those charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the Government proves, beyond a reasonable doubt, each essential element of the crime charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon a defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

GOVERNMENT'S PROPOSED INSTRUCTION NO. __

8th Circuit No. 3.11

3.11 REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

GOVERNMENT'S PROPOSED INSTRUCTION NO. __

8th Cir. No. 3.12

**3.12: ELECTION OF FOREPERSON; DUTY TO DELIBERATE;
PUNISHMENT NOT A FACTOR; COMMUNICATIONS
WITH COURT; CAUTIONARY; VERDICT FORM**

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 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 or bailiff, signed by one or more jurors. I will respond as soon as possible

Government's Proposed Instruction No. __ (Page 2)

either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not guilty must be unanimous. 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.

[Read form.]

You will take this form to the jury room, and when each of you has agreed on the verdict[s], your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

GOVERNMENT'S PROPOSED INSTRUCTION NO. __

8th Cir. No. 4.05A

4.05A CREDIBILITY - COOPERATING WITNESS

You have heard evidence that certain witnesses hope to receive a reduced sentence on criminal charges pending against them in return for their cooperation with the Government in this case. Certain witnesses entered into an agreement with the U.S. Attorney's Office which provide that in return for their assistance, the Government will recommend a less severe sentence, which could be less than the mandatory minimum sentence for the crime(s) with which they are charged. Certain witnesses are subject to a mandatory minimum sentence, that is, a sentence that the law provides must be of a certain minimum length. If the prosecutor handling these witnesses' cases believe they provided substantial assistance, that prosecutor can file in the court in which the charges are pending against these witnesses a motion to reduce their sentence below the statutory minimum. The judge has no power to reduce a sentence for substantial assistance unless the Government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the Government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

You may give the testimony of these witnesses such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by their hope of receiving a reduced sentence is for you to decide.

GOVERNMENT'S PROPOSED INSTRUCTION NO. __

8th Cir. No. 4.06

4.06 TESTIMONY OF INFORMER

You have heard evidence that a witness has an arrangement with the Government under which he/she receives consideration on behalf of a family member with criminal charges pending for providing information to the Government. His/her testimony was received in evidence and may be considered by you. You may give his/her testimony such weight as you think it deserves. Whether or not his/her information or testimony may have been influenced by such consideration is for you to determine.

GOVERNMENT’S PROPOSED INSTRUCTION NO. __

8th Cir. No. 4.10

4.10: OPINION EVIDENCE, EXPERT WITNESS

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 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.

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

8th Cir. 6.26.5861

**6.26.5861 ELEMENTS OF OFFENSE - FIREARMS
 POSSESSION OF MACHINE GUN (18 U.S.C. § 922(o))**

Count 1:

The crime of possession of a machine gun, as charged in Count 1 of the Indictment, has three essential elements, which are:

One, the defendant knew he had the firearm in his possession;

Two, the defendant knew the firearm was a machine gun, namely any one or more of the following: (1) A homemade Browning model 1919 .308 caliber machine gun, further described as bearing the following inscription: “Browning 1919 Borne by Hollis Wayne Fincher Black Oak Arkansas Amendment 2 is invoked SN61505 Non-commercial,” (2) a homemade Sten type design machine gun 9 mm, further described as having camouflage painting, and (3) a homemade Browning model 1919 .308 caliber machine gun, further described as bearing the following inscription: “W Fincher Non-commercial Amendment 2 is invoked Black Oak AR 7001;”

Three, the firearm was capable of operating as designed;

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

8th Cir. 6.26.5861

**6.26.5861 ELEMENTS OF OFFENSE - FIREARMS
POSSESSION OF A FIREARM NOT REGISTERED IN THE NATIONAL
FIREARMS AND TRANSFER RECORD**

Count 2:

The crime of possession of an unregistered firearm, a sawed off shotgun further described as a Remington model 870 express magnum 12 gauge short barreled shotgun, serial number A861076M, not registered to him in the National Firearms Registration and Transfer Record, as charged in Count 2 of the Indictment, has four essential elements, which are:

One, the defendant knew he had the firearm in his possession;

Two, the defendant knew the firearm was a sawed off shotgun further described as a Remington model 870 express magnum 12 gauge short barreled shotgun, serial number A861076M,

Three, the firearm was capable of operating as designed; and

Four, the firearm was not registered to the defendant in the National Firearms Registration and Transfer Record.

For you to find the defendant guilty of the crime charged, the government must prove all of the essential elements of that crime beyond a reasonable doubt; otherwise, you must find the defendant not guilty of the crime charged.

GOVERNMENT’S PROPOSED INSTRUCTION NO. __

INDICTMENT, “ON OR ABOUT”

D&B 13.05

You will note 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 an offense was committed on a date reasonably near the date alleged.

7.03 "KNOWINGLY" DEFINED

An act is done knowingly if the defendant realized what he was doing and did not act through ignorance, mistake, or accident. The government is not required to provide 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.

The term “knowingly” as used in these instructions with regard to the state of mind of the defendant, means that he was conscious of and aware of his actions, realized what he was doing or what was happening around him, and did not act because of ignorance, mistake, or accident.

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

8th Cir. No. 7.05

7.05: PROOF OF INTENT OR KNOWLEDGE

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

“FIREARM” DEFINITION

The term "firearm" means any weapon which will or is designated to or may be readily converted to expel a projectile by the action of an explosive.

GOVERNMENT'S PROPOSED INSTRUCTION NO. __

8th Cir. No. 8.02

8.02 POSSESSION: ACTUAL, CONSTRUCTIVE, SOLE, JOINT

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.