

Jury Instructions

**United States of America v. Damien Gouse
(11-cr-112-M)**

I intend to give you a copy of these instructions for use in the jury room, so feel free to simply listen and not worry about note taking.

Introduction

At this time, it is my duty to instruct you on the law applicable to this case. You must consider the instructions as a whole. You should not choose one part and disregard another. You must accept and apply the law as I give it to you in its entirety, and this is true whether you personally agree with the law or not. It would be a violation of the oath you took as jurors to base a decision on any version of the law other than that contained in my instructions, just as it would be a violation of that oath to return a decision upon anything but the evidence in this case. It is not up to you to decide what the law is or should be. Your duty is to apply the law as I explain it to you.

Presumption of Innocence

As I told you at the start of this trial, Mr. Gouse is presumed to be innocent of the accusations against him. This presumption of innocence remains with Mr. Gouse unless and until the government presents evidence satisfying you beyond a reasonable doubt that he is guilty.

The presumption of innocence is sufficient to require a not guilty verdict unless you find that such evidence has been presented.

If you find that the government has proven Mr. Gouse guilty beyond a reasonable doubt, the presumption of innocence disappears and is of no further avail to him. However, unless and until that time, the presumption remains with Mr. Gouse.

Defendant's Constitutional Right Not to Testify

A Defendant in a criminal trial has a constitutional right not to testify and no inference of guilt, or of anything else, may be drawn from the fact that Mr. Gouse did not testify. For you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

The Government as a Party

The mere fact that this case is brought in the name of the United States does not entitle the prosecution to any greater consideration than that accorded to Mr. Gouse. By the same token, it does not mean that the prosecution is entitled to any less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

Proof of All Elements

Shortly, I will explain the offense with which Mr. Gouse is charged and the elements the government must prove in order to establish that Mr. Gouse is guilty of that offense.

In order for the government to prove Mr. Gouse guilty of an offense, it must convince you, beyond a reasonable doubt, that it has proved each and every element of that offense. Possibilities or even probabilities are not sufficient.

If the government fails to prove any one or more elements of an offense beyond a reasonable doubt, then you must find Mr. Gouse not guilty.

On the other hand, if you are convinced, beyond a reasonable doubt, that all elements of an offense with which Mr. Gouse has been charged have been proven to you beyond a reasonable doubt, then you should find him guilty of that offense.

Reasonable Doubt

As I have said, the burden is upon the government to prove beyond a reasonable doubt that Mr. Grouse is guilty of the charge made against him. It is a strict and heavy burden, but it does not mean that Mr. Grouse's guilt must be proved beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning Mr. Grouse's guilt.

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Reasonable doubt exists when, after weighing and considering all the evidence, using reason and common sense, jurors cannot say that they have a settled conviction of the truth of the charge.

Of course, Mr. Grouse is never to be convicted on suspicion or conjecture. If, for example, you view the evidence in the case as reasonably permitting either of two conclusions — one that Mr. Grouse is guilty as charged, the other that Mr. Grouse is not guilty — then you must find Mr. Grouse not guilty.

It is not sufficient for the government to establish a probability, though a strong one, that a fact charged is more likely to be true than not true. That is not enough to meet the burden of proof beyond reasonable doubt. On the other hand, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

Concluding my instructions on the burden, then, I instruct you that what the government must do to meet its heavy burden is to establish the truth of each part of each offense charged by proof that convinces you and leaves you with no reasonable doubt, and thus satisfies you that you can, consistently with your oath as jurors, base your verdict upon it. If you so find as to the

charge against Mr. Gouse, then you will return a verdict of guilty. If, on the other hand, you think there is a reasonable doubt about whether Mr. Gouse is guilty of the charge, then you must give Mr. Gouse the benefit of the doubt and find Mr. Gouse not guilty.

Charge

Mr. Gouse is charged with possessing a firearm in or affecting commerce after having been convicted of a crime punishable by imprisonment for more than one year. It is against federal law for a person who has been previously convicted of a felony to possess a firearm that was connected with interstate commerce.

For you to find Mr. Gouse guilty of this crime, you must be satisfied that the government has proven each of these elements beyond a reasonable doubt.

Now, in this case, the government and Mr. Gouse have stipulated that Mr. Gouse is a person who has been previously convicted of a felony. Therefore, there are two questions for you to decide.

(1) Whether the firearm, a Harrington and Richardson .22 caliber revolver, was connected with interstate commerce. This means that the firearm, at any time after it was manufactured, moved from one state to another. The travel need not have been connected to the charge and need not have been in furtherance of any unlawful activity.

(2) Whether on November 29, 2007, Mr. Gouse knowingly possessed a Harrington and Richardson .22 caliber revolver.

Consideration of Mr. Gouse's Prior Conviction Limited

I emphasize that Mr. Gouse's prior conviction shall be considered by you for the fact that such conviction constitutes an element of the offense with which he is now charged. You may not consider the prior conviction as evidence that Mr. Gouse has the propensity to commit other crimes. In particular, you may not consider the prior conviction as evidence that Mr. Gouse had the propensity to commit the crimes charged in the indictment.

Knowingly

The government must prove beyond a reasonable doubt that on or about November 29, 2007, Mr. Gouse "knowingly" possessed a firearm. Let me first define the term "knowingly." The term "knowingly," as used in these instructions to describe the alleged state of mind of Mr. Gouse, means that he was conscious and aware of his action, realized what he was doing or what was happening around him and did not act because of ignorance, mistake, or accident.

The government is not required to prove that at the time of possession Mr. Gouse knew that he was breaking the law. So long as you find beyond a reasonable doubt that Mr. Gouse knowingly had possession of a firearm, you may find that the element of possession has been proved.

Possession

Now, I will define the term "possession." The government must prove beyond a reasonable doubt that on or about November 29, 2007, Mr. Gouse possessed a firearm.

The word “possess” means to exercise authority, dominion, or control over something. It is not necessarily the same as legal ownership. Proof of ownership is not required in order to establish possession.

The law recognizes different kinds of “possession.” It may be actual or constructive. Possession is considered to be “actual” when a person knowingly has direct physical control or authority over something at a given time. Possession is called “constructive” when a person, although not in actual possession, knowingly has both the power and intention at a given time to exercise dominion or control over something, whether directly or through another person.

Possession may also be sole or joint. If one person alone has actual or constructive possession of an object, then that person is said to have sole possession of that object. If two or more persons share either actual or constructive possession of an object, then those persons are said to have joint possession of that object.

It is sufficient if you find that Mr. Grouse possessed the firearm voluntarily and not by accident or mistake and that Mr. Grouse knew he possessed the firearm. I caution you, however, that mere proximity to a firearm or mere association with another person who exercises control over a firearm is insufficient to support a finding of possession.

Method of Assessing Evidence

Now that you know what it is that the government must prove and the standard of proof to be applied, the next question is how do you determine whether the government has proved these things beyond a reasonable doubt?

Obviously, you must make your determination solely from the evidence properly before you and from all reasonable and legitimate inferences to be drawn from that evidence.

The evidence that is properly before you consists of:

1. The testimony of the witnesses; and
2. The exhibits that I have admitted into evidence.

From that evidence, you may draw whatever conclusions are reasonable under the circumstances.

The evidence that is properly before you does not include:

1. Comments or statements by the attorneys;
2. Documents, photographs or other items which may have been referred to but have not been admitted into evidence; or
3. Anything you may have heard or seen outside of this courtroom regarding the events in question or the participants in this case.

Witnesses - Credibility - General Factors

As to the testimony of witnesses, your principal task is to determine the credibility of the witnesses and the weight you will give to the testimony of each.

In making that determination, there are a number of factors that you may consider:

1. The opportunity or lack of opportunity the witness had to acquire knowledge of the facts about which the witness testified. In other words, was the witness in a position to have accurately perceived the facts that the witness related to you.
2. The reliability or unreliability of the witness's memory. In other words, did the witness have a clear recollection of what happened or was the witness's memory uncertain or unclear.

3. The witness's appearance on the stand. Did the witness appear to be a person who was telling the complete and unadulterated truth, or did it appear that the witness was slanting things one way or another either consciously or unconsciously.

4. The probability or improbability of the witness's testimony. Did what the witness had to say sound reasonable or plausible or did it appear to be highly unlikely or impossible.

5. Whether the witness had anything to gain or lose from the outcome of this case. In other words, was the witness totally impartial or did the witness have some stake in the outcome or some reason to favor one side or the other.

Government Agents

The fact that a witness may be employed by a law enforcement agency does not, by itself, mean that you should give that witness's testimony any greater or any lesser weight simply because of that fact. You should assess the credibility and testimony of such a witness by applying the same factors as you would with respect to any other witness.

Witnesses - Number - Weight of Testimony

In evaluating the testimonial evidence, remember that you are not required to believe something to be a fact simply because a witness has stated it to be a fact and no one has contradicted what that witness said. If, in the light of all of the evidence, you believe that the witness is mistaken or has testified falsely or that he is proposing something that is inherently impossible or unworthy of belief, you may disregard that witness's testimony even in the absence of any contradictory evidence.

Just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the greater number of witnesses. Once again, it is the credibility or quality of the testimony that determines where the weight of the evidence lies.

Exhibits

In addition to assessing the credibility of the witnesses and the weight to be given to their testimony, you should also evaluate the exhibits which you will have with you in the jury room. Examine them and consider them carefully.

However, bear in mind that merely because an exhibit has been admitted into evidence does not mean that you are required to accept it at face value. Like the testimony of a witness, the significance of an exhibit or the weight you attach to it will depend upon your evaluation of that exhibit in light of all the facts and circumstances of the case.

Circumstantial Evidence

As I mentioned previously, you may consider only the evidence that is properly before you. However, that does not mean that, in determining the facts, you are limited to the statements of the witnesses or the contents of the exhibits.

In reaching your conclusions, you are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in the light of your experience. Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in the case.

Such evidence is sometimes called circumstantial evidence. To put it another way, a fact may be proved either by direct evidence or by circumstantial evidence. Direct evidence includes

such things as the testimony of an eyewitness who personally observed the fact in question or a photograph or document showing the actual thing described.

Circumstantial evidence consists of proof of a series of facts or circumstances from which the existence or nonexistence of another fact may be reasonably inferred. (Example: rain on the pavement.)

The law makes no distinction between the weight to be given to direct and circumstantial evidence. However, it does require that any fact required to convict a Defendant be proved beyond a reasonable doubt.

Conduct of Court - General

As I have said before, it is up to you to determine the facts in this case. You should not interpret anything I have said or done during this trial as expressing an opinion on my part as to what the facts in this case are. I have not intended to express any such opinion and you should not be concerned about what my opinions might be regarding the facts. That is a matter for you to decide.

Objections by Counsel

During this trial there have been occasions when the attorneys have objected to a question that was asked of a witness. You should not penalize an attorney, or more importantly, his client, for objecting. It is the attorney's right and duty to protect the client's interests by objecting to what the attorney may believe is evidence that does not satisfy the requirements of the rules of evidence.

If I sustained the objection, it is important that you not speculate about what the answer to the objected-to question might have been. By sustaining the objection, the Court has determined that the evidence should not be considered by you.

Bias and Prejudice

Neither bias in favor of any person or cause, prejudice against any person or cause, nor sympathy of any kind should be permitted to influence you in the course of your deliberations.

All that any party here is entitled to, or, for that matter expects, is a verdict based upon your fair, scrupulous and conscientious examination of the evidence before you and your application of the law as I have explained it to you.

Verdict - Unanimity Required

In order to return a verdict in this case, all twelve of you must agree as to what that verdict will be. You cannot return a verdict of either guilty or not guilty with respect to any charge against Mr. Grouse unless your decision is unanimous, meaning that you all agree.

Therefore there are two things that you should keep in mind during the course of your deliberations:

On the one hand, you should listen carefully as to what your fellow jurors have to say and should be open minded enough to change your opinion if you become convinced that it was incorrect.

On the other hand, you must recognize that each of you has an individual responsibility to vote for the verdict that you believe is the correct one based on the evidence that has been presented and the law as I have explained it. Accordingly, you should have the courage to stick

to your opinion even though some or all of the other jurors may disagree as long as you have listened to their views with an open mind.

Foreperson And Duty to Deliberate

Juror # _____, _____, will be the foreperson. S/he will preside over the deliberations and speak for you here in court.

You will discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous, meaning all of you must agree. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion during the course of the deliberations if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

Communications with the Court

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by the foreperson. No member of the jury should ever attempt to contact me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

Other Communications Prohibited

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, Blackberry or computer, the internet, any internet service, any text or instant messaging service, any internet chat room, blog, or website

such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case.

Return of Verdict

A verdict form has been prepared for you by the Court. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign it and date it, and let the Court Security Officer know that you are ready to return to the courtroom.

Copy of Instructions

I have instructed you on the law that governs your deliberations. I will send into the jury room a written copy of my instructions.

Exhibits

Several exhibits were admitted during the trial. The clerk will gather those exhibits and bring them to the jury room shortly. Both a firearm and ammunition have been marked as exhibits. You cannot have both the firearm and bullets in the jury room at the same time. The firearm will be sent in with you. If you want to see the bullets, you can request them and they will be exchanged for the firearm.