UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v. CR No. 12-56-ML

JARED LEMAY and
COREY RIDOLFI

JURY INSTRUCTIONS

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PART I: GENERAL INSTRUCTIONS

1. INTRODUCTION

Members of the jury, we have now come to the end of this trial. This case, like all criminal cases, is a serious one. I say this because the defendants and the United States have a deep concern for your mature consideration of the evidence as presented and the law which I am about to give you.

Although you as the jury are the sole judges of the facts, you are duty bound to follow the law as I instruct you, and to apply that law to the facts as you find them to be from the evidence which has been presented during this trial. You are not to single out any one instruction as stating the law. Rather, you must consider these instructions in their entirety. You are not to be concerned with the wisdom of any rule of law, regardless of any opinion which you might have as to what the law ought to be. It would be a violation of your sworn duty to base your verdict upon any version of the law other than that which I am about to give to you.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the "not guilty" pleas of the defendants. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The accused and the government are entitled to an impartial consideration of all the evidence. Moreover, the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict, regardless of the consequences.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a

litigation. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

2. FUNCTION OF A JURY

Ladies and gentlemen, you are the trier of facts; you alone must determine what the facts are in this particular case. My function and duty is to instruct you on the law that applies to this case. It is your duty to accept the law as I give it to you—whether or not you agree with it—and to apply that law to the facts as you find them.

3. EVIDENCE RECEIVED IN THIS CASE – STIPULATIONS

For the purpose of determining whether or not the government has sustained its burden of proof, you must evaluate all of the evidence. The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence, and all facts which may have been "stipulated." A stipulation is simply an agreement between the parties that certain facts exist.

Any proposed testimony or proposed exhibit to which an objection was sustained by the Court, as well as any testimony ordered stricken by the Court, must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not proper evidence and must be entirely disregarded.

4. INFERENCES – DEFINED

In determining whether the government has sustained its burden of proof, you are to consider only the evidence. But in your consideration of the evidence, you are not limited to the

statements of witnesses, or solely to what you see and hear as the witnesses testify. You are permitted to draw, from the facts which you find have been proven, such reasonable inferences as seem justified in light of your experiences.

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.

5. EVIDENCE – DIRECT AND CIRCUMSTANTIAL

There are, generally speaking, two types of evidence. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, which is a chain of circumstances pointing to certain facts.

The law makes no distinction at all between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. In determining whether the government has sustained its burden of proof you can and should weigh all the evidence, both direct and circumstantial.

6. OBJECTIONS AND WEIGHT OF THE EVIDENCE

The fact that the Court may have admitted evidence over objection should not influence you in determining the weight that you will give such evidence. Nor should statements made by counsel, either for or against the admission of offered evidence, influence your determination of the weight that you will give the evidence if admitted. In other words, you should determine the weight that you will give such evidence on the basis of your own consideration of it and without regard to the statements of counsel concerning the admissibility of such evidence.

7. JURY'S RECOLLECTION CONTROLS

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

8. CONSIDER ONLY THE OFFENSE CHARGED

The defendants are not on trial for any act or any conduct other than that specifically charged in the indictment.

9. PRESUMPTION OF INNOCENCE

In all criminal cases, there is a presumption of innocence. Every defendant under our system of law is presumed to be innocent of the accusation which is filed against him or her, and this presumption of innocence must remain with the defendant from the moment the charge is brought, throughout the trial, through the arguments of counsel, throughout the instructions of the Court, and throughout your deliberations when you retire to consider your verdict in the secrecy of the jury room.

The presumption of innocence remains unless and until you find that a defendant is guilty beyond a reasonable doubt of the charge as stated in the indictment. If you find, however, that a defendant is guilty beyond a reasonable doubt of each and every element of the crime with which he is charged, the presumption of innocence disappears and is of no further avail to him.

10. BURDEN OF PROOF

The burden is upon the government to prove beyond a reasonable doubt that the

defendant is guilty of the charge made against him. It is a strict and heavy burden, but it does not mean that the defendant's guilt must be proved beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning the defendant'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, a defendant 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 the defendant is guilty as charged, the other that the defendant is not guilty–you will find the defendant 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 a 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.

I instruct you that what the government must do to meet its heavy burden is to establish the truth of each element 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 a particular charge against the defendant, you will return a verdict of guilty on that charge. If, on the other hand, you think there is a reasonable doubt about whether the defendant is guilty of a particular offense, you must give the

defendant the benefit of the doubt and find the defendant not guilty of that offense.

11. CONSIDER EACH DEFENDANT AND EACH COUNT SEPARATELY

It is your duty to give separate and personal consideration to the case of each defendant. When you do so, you should analyze what the evidence in the case shows with respect to that particular defendant, leaving out of consideration entirely any evidence admitted solely against the other defendant. The fact that you return a verdict of guilty or not guilty as to one defendant on any count of the indictment should not, in any way, affect your verdict regarding the other defendant.

Here, Mr. Ridolfi is charged in both counts of the indictment. You must consider each charge separately. The fact that you find him guilty or not guilty on one count does not mean that you should find him guilty or not guilty on the other count. Mr. Lemay is charged only in Count Two of the indictment; you therefore must consider the evidence against Mr. Lemay with respect to that charge.

PART II: THE OFFENSES CHARGED

12. UNDERSTANDING AN INDICTMENT

An indictment is nothing more than an accusation. It is a piece of paper filed with the Court to bring a criminal charge against a defendant. Here, the defendants have pled not guilty and have put in issue the charges alleged in the indictment. The government therefore has the burden of proving the allegations made against each defendant.

The fact that an indictment has been filed in this case does not give rise to a presumption

of guilt. It does not even lead to an inference of guilt. The indictment simply brings this matter before you for determination. Beyond that, it has no significance whatsoever.

13. DEFINITION OF "ON OR ABOUT"

You will note that the indictment charges that the offenses were committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient that the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in the indictment.

14. COUNT ONE

Count One of the indictment in this case charges that on or about November 28, 2011, in the District of Rhode Island, the defendant, Corey Ridolfi, who was previously convicted of a crime punishable by a term of imprisonment exceeding one year, did knowingly and intentionally possess, in and affecting commerce, one or more firearms, all in violation of 18 U.S.C. § 922(g)(1).

15. 18 U.S.C. § 922(g)(1)

Section 922(g)(1) provides, in part, that "[i]t shall be unlawful for any person...who has been convicted in any court of...a crime punishable by imprisonment for a term exceeding one year...to...possess in or affecting commerce, any firearm."

16. 18 U.S.C. § 922(g)(1) – ESSENTIAL ELEMENTS

In order to prove that Mr. Ridolfi violated section 922(g)(1), the government must prove three elements beyond a reasonable doubt:

One: That, at the time of possession, Mr. Ridolfi had been convicted of a crime punishable by imprisonment for a term greater than one year;

Two: That Mr. Ridolfi knowingly possessed the firearm described in the indictment; and,

Three: That the firearm was connected with interstate commerce.

17. "PREVIOUS CONVICTION" – DEFINED

The first element requires that the government prove beyond a reasonable doubt that Mr. Ridolfi had been convicted of a crime punishable by imprisonment for a term greater than one year in a court of the United States, or any state, prior to the date he is alleged to have possessed the firearm described in the indictment.

In this case, the government and Mr. Ridolfi have stipulated that prior to the date of the offense charged in this indictment, Mr. Ridolfi had been convicted of a crime punishable by imprisonment for a term greater than one year. You may, therefore, consider this element satisfied by the parties' stipulation.

18. CONSIDERATION OF PREVIOUS CONVICTION LIMITED

I emphasize that Mr. Ridolfi'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. Ridolfi has the propensity to commit other

crimes. In particular, you may not consider the prior conviction as evidence that Mr. Ridolfi had the propensity to commit the crimes charged in the indictment.

19. COUNT TWO

Count Two of the indictment charges that on or about November 28, 2011, in the District of Rhode Island, defendants Jared Lemay and Corey Ridolfi, knowingly possessed one or more stolen firearms, which had been shipped and transported in interstate commerce, knowing and having reasonable cause to believe that one or more firearms had been stolen, all in violation of 18 U.S.C. § 922 (j) and 18 U.S.C. § (2).

20. 18 U.S.C. § 922(j)

Section 922(j) provides, in part, that "[i]t shall be unlawful for any person to . . . possess . . . any stolen firearm . . . which has been shipped or transported in, interstate . . . commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm . . . was stolen."

21. 18 U.S.C. § 922(j) – ESSENTIAL ELEMENTS

In order to prove that a defendant violated section 922(j), the government must prove three elements beyond a reasonable doubt:

One: That a defendant knowingly possessed a stolen firearm;

Two: That the firearm had moved or was shipped in interstate commerce;

Three: That a defendant knew or had reasonable cause to believe that the firearm

was stolen.

22. "REASONABLE CAUSE TO BELIEVE" – DEFINED

With respect to the offense charged in Count Two, the government must prove beyond a reasonable doubt that a defendant knew or had reasonable cause to believe that the firearm was stolen. To have "reasonable cause to believe" that a firearm was stolen means that it would have been reasonable for a defendant in this case, in particular, to believe that the firearm was stolen.

23. POSSESSION – DEFINED

As to both counts One and Two, the government must prove beyond a reasonable doubt that on or about the date set forth in the indictment, the defendant 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 the defendant possessed the firearm voluntarily and not by accident or mistake and that the defendant 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.

24. "KNOWINGLY"—DEFINED

As to both counts One and Two, the government must prove beyond a reasonable doubt that on or about the date set forth in the indictment, the defendant "knowingly" possessed a firearm. The term "knowingly," as used in these instructions to describe the alleged state of mind of the defendant, 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 the defendant knew that he was breaking the law. So long as you find beyond a reasonable doubt that the defendant knowingly had actual or constructive possession of a firearm, you may find that the element of possession has been proved.

25. "FIREARM"—DEFINED

As to both counts One and Two, the government must prove beyond a reasonable doubt that on or about the date set forth in the indictment, the defendant possessed a "firearm." A "firearm" is any weapon which will or is designed to or may readily be converted to expel a

projectile by the action of an explosive or the frame or receiver of any such weapon. The term includes any shotgun.

The law makes no distinction between loaded and unloaded firearms. Thus, it is not necessary for the government to prove that the firearm was loaded at the time of possession.

The government and both defendants have stipulated that Exhibits 3 and 4 are firearms as that term is defined here. Therefore, you may consider this fact to be proven.

26. "IN OR AFFECTING COMMERCE" "SHIPPED OR TRANSPORTED IN INTERSTATE COMMERCE" – DEFINED

As to Count One, the government must prove beyond a reasonable doubt that the firearm had been "in or affecting interstate commerce." As to Count Two, the government must prove beyond a reasonable doubt that the firearm had been "shipped or transported in interstate commerce." The government may meet its burden by showing that the firearm was connected with or transported in interstate commerce. This may be accomplished by proving that the firearm, any time after it was manufactured, moved from one state to another. The travel need not have been connected to the charge in the indictment and need not have been in furtherance of any unlawful activity.

The government and both defendants have stipulated that the firearms, Exhibits 3 and 4, were manufactured outside Rhode Island. Therefore, you may consider this fact to be proven.

27. AIDING AND ABETTING

Count 2 of the indictment also charges the defendants with violating 18 U.S.C. § 2, that

is, aiding and abetting the crime of knowingly possessing one or more stolen firearms.

28. 18 U.S.C. § 2

Section 2 of Title 18 of the United States Code provides that:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

29. 18 U.S.C. § 2 – AIDING AND ABETTING – ESSENTIAL ELEMENTS

To "aid and abet" means to intentionally help someone else commit a crime. To establish aiding and abetting, the government must prove beyond a reasonable doubt:

First, that someone else committed the charged crime, here knowingly possessing one or more stolen firearms;

Second, that the defendant under consideration consciously shared the other defendant's knowledge of the charged crime, that he intended to help him and that he willfully took part in the endeavor, seeking to make it succeed.

An act is done "willfully" if done voluntarily and intentionally with the intent that something the law forbids is done – that is to say with bad purpose, either to disobey or disregard the law.

The defendant under consideration need not perform the charged crime, be present when it is performed, or be aware of the details of its execution to be guilty of aiding and abetting. A general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of the charged crime and knowledge that the charged crime

is being committed are also not sufficient to establish aiding and abetting. In order for the government to sustain its burden on the charge that the defendant under consideration aided and abetted the crime of knowingly possessing one or more stolen firearms, the government must prove beyond a reasonable doubt that someone else committed the charged crime and that defendant under consideration consciously knew of the charged crime and that he intended to help the other person and that he willfully took part in the endeavor, seeking to make it succeed.

PART III: CONSIDERATION OF THE EVIDENCE

30. EXHIBITS

Exhibits admitted into evidence by the Court are properly before you, and will be available to you during your deliberations. An exhibit marked by the Court for identification is not evidence in the case unless or until it was admitted by the Court as a full exhibit. If it has not been admitted as a full exhibit, you may not consider it. If it was admitted, however, it is just as much a part of the evidence in the case as the testimony which you have heard from the witness stand.

31. REMARKS OF COUNSEL

Remarks, statements, or questions by counsel are not evidence and are not to be considered by you as evidence during your deliberations. Neither should you permit objections by counsel to the admission of evidence, or the rulings of the Court, create any bias or prejudice toward counsel or the party whom he or she represents. It is the duty of counsel for both sides to represent their clients vigorously and to defend their client's rights and interests. In the

performance of that duty, counsel freely may make objection to the admission of offered evidence, or to any other ruling of the Court, and should not be penalized for doing so.

32. CONDUCT OF COURT AND COUNSEL

If during trial, or in instructing you, I have said or done anything that has caused you to believe that I was indicating an opinion as to what the facts are in this case, you should put that belief out of your mind. I did not intend to indicate any such opinion. In fact, I try not to have an opinion about the case because you are the sole and exclusive judges of the facts.

In determining the facts, you are to consider only that evidence which has properly been placed before you. It is the Court's duty to pass upon the admissibility of offered evidence, that is, to decide whether or not offered evidence should be considered by you. Evidence admitted by the Court is properly before you for your consideration; evidence which the Court has refused to admit, or may have stricken from the record after you heard it, is not a proper subject for your deliberations and is not to be considered by you.

33. TESTIMONY OF WITNESSES

The law does not require you to accept or credit the evidence I have admitted. In determining what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses, and the weight you choose to give to his or her testimony.

In evaluating the testimony of witnesses you may consider several facts—the opportunity of the witnesses to have acquired knowledge of that to which they testified; their conduct and

demeanor while testifying; their interest or lack of interest, if any, in the outcome of the case; their intelligence or lack thereof; and the probability or improbability of the truth of their testimony.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, however, always consider whether it pertains to a matter of importance or an insignificant detail and consider whether the discrepancy results from innocent error or from intentional falsehood.

From these circumstances, and from all of the other facts and circumstances proved at the trial, you may determine whether or not the government has sustained its burden of proof.

34. DEFENDANT'S RIGHT TO REMAIN SILENT

The law does not compel a defendant in a criminal case to take the witness stand and testify. No presumption of guilt may be raised and no inference of any kind may be drawn from the fact that the defendant did not testify.

Further, the law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence.

PART IV: DELIBERATIONS AND VERDICT

35. UNANIMOUS VERDICT—JURY CONDUCT

To render a verdict, all twelve of you must agree, that is, your verdict must be unanimous.

Therefore, during your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your view simply because a majority holds to the contrary view, but in pursuing your deliberations, you should keep your minds reasonably open with respect to any point in dispute so that you will not be prevented from achieving a unanimous verdict due to mere stubbornness. It is your right, however, to maintain your view. The vote of each juror is as important as the vote of any other juror, and you need not give up your view, sincerely held, simply because a majority holds to the contrary view.

Do not approach your consideration of the case in an intellectual vacuum. You are not required to disregard your experiences and observations in the ordinary everyday affairs of life. Indeed, your experiences and observations are essential to your exercise of sound judgment and discretion, and it is your right and duty to consider the evidence in light of such experiences and observations. It is hoped and anticipated that you will sift all of the evidence in this case through maturity and common sense.

Of course, prejudice, sympathy or compassion should not be permitted to influence you. All that any party is entitled to, or expects, is a verdict based upon your fair, scrupulous and conscientious examination of the evidence and an application of the law to that evidence as I have instructed you.

36. COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

If it becomes necessary during your deliberations to communicate with the Court, you may send a note signed by your foreperson, or by one or more members of the jury. The foreperson may then hand such written request or question to the marshal in whose charge you will be placed. The marshal will bring any written questions or requests to me. I will have you brought into the courtroom and will attempt to fulfill your request or answer your question. Other than the method outlined, please do not attempt to communicate privately or in any other way with the Court.

Bear in mind also that you are never to reveal to any person—not even to the Court—how the jury stands, numerically or otherwise, on the question of whether the accused is guilty or not guilty, until after you have reached a unanimous verdict.

You may now retire with the marshal to enter upon your deliberations. When you have reached a verdict, you will return here and make your verdict known.