

**Jury Instructions: United States v. Richard Ribeiro, No. 06-66**

**Introduction**

At this time, it is my duty to instruct you on the law applicable to this case. You must accept the rules of law that I give you and apply them to the facts in this case as you find those facts to be.

In applying the law that I am about to explain to you in these instructions, 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.

You must accept and apply the rules of law that I give to you whether you agree with them 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 have previously told you during the course of this trial, a Defendant is presumed to be innocent of the accusations against him. This presumption of innocence remains with a Defendant unless and until the Government presents evidence satisfying you beyond a reasonable doubt that the Defendant 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 proved a Defendant guilty beyond a reasonable doubt, the presumption of innocence disappears and is of no further avail to him. However, until that time, the presumption remains with the Defendant.

### Proof of All Elements

I will explain the offense with which the Defendant is charged and the elements the Government must prove in order to establish that Defendant is guilty of that offense.

In order for the Government to prove the Defendant guilty of the offense, it must convince you, beyond a reasonable doubt, that it has proven 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 the offense beyond a reasonable doubt, you must find the Defendant not guilty of that offense.

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

Bear in mind that the requirement that the Government prove every element of the offense with which the Defendant is charged does not mean that the Government is required to prove every statement contained in the indictment.

What it means is that the Government must prove facts sufficient to prove all of the elements of the offense with which the Defendant is charged as I will explain them.

### Reasonable Doubt

The Government's obligation to prove a Defendant's guilt beyond a reasonable doubt does not mean that it must do so beyond all doubt or beyond any conceivable shadow of a doubt. What it means is that the Government must prove the Defendant's guilt beyond a reasonable doubt.

I cannot provide you with a definition of reasonable doubt. You know what "reasonable" means and you know what a "doubt" is. Therefore, it is up to you to decide whether the Government has proved a Defendant guilty beyond a reasonable doubt.

### Indictment - Effect

You will have the indictment with you in the jury room to help you remember the precise nature of the charges against the Defendant.

I remind you, once again, that an indictment is nothing more than an accusation. It should not be considered as evidence of guilt. It may not even be the basis of an inference of guilt. All that it does is to bring this matter before you for determination. Beyond that, it has no significance, whatever. It merely sets forth the elements of the offense which the Government must prove beyond a reasonable doubt.

### Method of Assessing Evidence

In a moment I will explain what it is that the Government must prove. I have already explained the standard of proof to be applied. The next question is how do you determine whether the Government has proven the things it must prove 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;
2. The exhibits that I have admitted into evidence;
3. Any stipulations among the attorneys in which they agree as to what the facts are.

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

The evidence that is properly before you does not include:

1. Questions, comments or statements by the attorneys;
  2. Answers given by witnesses which I ordered stricken and instructed you to disregard;
  3. Documents, photographs or other items which may have been referred to but have not been admitted into evidence.
- Since they are not proper evidence, you should not speculate or guess as to what they might say or show and

you may not consider them except to the extent that and for the purpose that they may have been read or shown to you during the course of the trial.

4. Anything you may have heard or seen outside of this courtroom regarding the events in question or the participants in this case.

**Evidence of the Defendant's Prior Conviction**

You have heard evidence that the defendant was previously convicted of a crime punishable by more than one year imprisonment.

You may consider this evidence for the limited purpose of deciding if the government has proved this element of the offense. The fact that the defendant was previously convicted of another crime does not mean that he committed the crime for which he is now on trial. You must not use that prior conviction as proof of the crime charged in this case, except as to the element requiring proof of the prior conviction. Put in other words, you must not use that conviction as proof that the defendant possessed a firearm. Remember, the only purpose for which you may consider the prior conviction is to determine if the government satisfied the element of the offense that requires proof of a prior conviction.



### 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 witnesses 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.

**Witnesses - Credibility - 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 or she 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.

You should also bear in mind that it is not the number of witnesses testifying on either side of a particular issue that determines where the weight of the evidence lies. Rather, it is the quality of the witnesses's testimony that counts.

Thus, just because one witness testifies on one side of an issue and one witness testifies on the other side does not necessarily mean that you must consider the evidence evenly balanced. If you feel that one of the witnesses was more credible than the other, for whatever reason, you may find that the weight of the evidence lies on the side of that witness.

Similarly, 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.

**Defendant's Constitutional Right Not to Testify**

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

### 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 proven, 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.

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 proven beyond a

reasonable doubt. Example of circumstantial evidence: rain on the driveway/grass.



**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 a 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.

**The Government as a Party**

The mere fact that this case is brought in the name of the United States of America does not entitle the prosecution to any greater consideration than that accorded to the Defendant. 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.

### **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 the charge against the Defendant unless your decision is unanimous.

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.

**Definition of "On or About"**

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 the offense was committed on a date reasonably near the date alleged.

### **Legality of the Search Not an Issue**

You have heard some testimony regarding the search warrant and the basis for it. Keep in mind that the legality of the search is not an issue in this trial. The only issue for you to decide is whether the government has proven beyond a reasonable doubt that the Defendant committed the offence charged.

### Overview of the Indictment

The indictment in this case contains a single count.

Count One charges Defendant Richard Ribeiro with being in possession of a firearm after having been previously convicted of a crime punishable by more than one year imprisonment.



**Count One - Felon-in-Possession**

I shall now turn to a discussion of the law applicable to count one.

Count One charges

On or about May 1, 2006, in the District of Rhode Island, the Defendant, Richard Ribeiro, 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, three firearms, to wit: a Savage 30.06 caliber rifle, serial number C897661; a Mossberg .12 gauge shotgun, serial number MV41791E; and a Marlin .357 caliber rifle, serial number 21048943.

In violation of 18 U.S.C. §§ 922(g)(1).

**The Statute Defining the Offense Charged**

Section 922(g)(1) of Title 18 of the United States Code provides in relevant part:

It 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.

**The Essential Elements of the Offense**

For you to find the Defendant, Richard Ribeiro, guilty of this charge, you must be satisfied that the Government has proven each of the following elements beyond a reasonable doubt:

First, that the Defendant, Richard Ribeiro, prior to May 1, 2006, had been convicted in any court of at least one crime punishable by imprisonment for a term exceeding one year;

Second, that the Defendant, Richard Ribeiro knowingly possessed a firearm; and

Third, that the firearm moved in or affected interstate commerce.

**Element #1**

The first element that the Government must prove beyond a reasonable doubt is that prior to May 1, 2006, the Defendant, Richard Ribeiro has been convicted of a felony, that is a crime punishable by a term of imprisonment exceeding one year. The Defendant has stipulated that he had been convicted of a felony prior to May 1, 2006. You are to take that fact as proven.

**Element #2**

The second element that the Government must prove beyond a reasonable doubt is that on or about May 1, 2006, the Defendant, Richard Ribeiro knowingly possessed a firearm.

**Element #2 Definition: "Knowingly"**

The term "knowingly" means that the act was done voluntarily and intentionally, and not because of mistake or by accident.

**Element #2 Definition: "Possess"**

The term "possess" means to exercise authority, dominion or control over something. It is not necessarily the same as legal ownership. The law recognizes different kinds of possession.

Possession includes both actual and constructive possession. A person who has direct physical control of something on or around his person is then in actual possession of it. A person who is not in actual possession, but who has both the power and the intention to exercise control over something is in constructive possession of it. Whenever I use the term "possession" in these instructions, I mean actual as well as constructive possession.

Possession also includes both sole and joint possession. If one person alone has actual or constructive possession, possession is sole. If two or more persons share actual or constructive possession, possession is joint. Whenever I have used the word "possession" in these instructions, I mean joint as well as sole possession.

### **Mere Presence**

However, if you find as a fact that the defendant was merely present in the house and had no knowledge of the firearms charged in the indictment, you must find him not guilty of the being a felon in possession of the firearms charged in the indictment.



**Element #2 Definition: "Firearm"**

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

**Element #3**

**In or Affecting Commerce**

The third element that the Government must prove beyond a reasonable doubt is that the firearm moved in or affected interstate commerce. This means that the firearm, at any time after it was manufactured, traveled 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.

### Selection of Foreman and Duty to Deliberate

When you begin your deliberations, you should elect one member of the jury as your foreperson. The foreperson will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

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 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.

### **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 and date it, and advise the Court 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. You are reminded, however, that the law is as I have given it to you from the bench; and the written copy is merely a guide to assist you.