IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JERRY LEE ALLEN SWEARINGEN, Defendant.	No. 13-CR-99-LRR **FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will 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 and during trial are not repeated here.

The instructions I am about to give you now 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.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NO. 3

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.

INSTRUCTION NO. 4

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses and documents and other things received as exhibits and the facts that have been stipulated—that 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 the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties 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.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

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

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. 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.

INSTRUCTION NO. 6

The government and defendant have stipulated—that is, they have agreed—that certain facts are as counsel have just stated. You must therefore treat those facts as having been proved.

INSTRUCTION NO. 7

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. 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 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 misrecollection 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.

INSTRUCTION NO. 8

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached" and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

You have heard evidence that Jerry Lee Allen Swearingen was once convicted of a crime. You may use that evidence to help you decide whether you believe this witness and how much weight to give his testimony.

INSTRUCTION NO. 9

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

Expert testimony should be considered just like any other testimony. You may accept it 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.

INSTRUCTION NO. 10

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they were received by you.

INSTRUCTION NO. 11

A reasonable doubt is a doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 12

The Indictment in this case charges defendant with being a felon in possession of ammunition and firearms. Defendant has pleaded not guilty to that charge.

The Indictment is simply the document that formally charges defendant with the crime for which he is on trial. The Indictment is not evidence. You must presume defendant to be innocent at this stage in the proceedings. Thus, the trial of defendant begins with a clean slate with no evidence against him. The presumption of innocence alone is sufficient to find defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crime charged.

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial.

INSTRUCTION NO. 13

The crime of being a felon in possession of ammunition or firearms, as charged in Count 1 of the Indictment, has three elements, which are:

One, defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year;

Two, after that, defendant knowingly possessed the following ammunition or at least one of the following firearms, that is:

1. Miscellaneous rifle ammunition;
2. a Carl Gustaf's Stads Gevars Faktori, 6.5mm rifle marked 1906, bearing serial number JV188952;
3. a Carl Gustaf's Stads Gevars Faktori, 6.5mm rifle marked 1915, bearing serial number HK354158;
4. a USSR M44, 7.62x54r caliber rifle, bearing serial number 36618;
5. a Remington 12A, .22 caliber rifle, bearing serial number 593562;
6. a Remington 870, 20 gauge shotgun, bearing serial number B610606U;
7. a Swiss Schmidt-Rubin, 7.5mm rifle, bearing serial number 403095;
8. a Russian M91/30, 7.62x54r caliber rifle marked 1936, bearing serial number 9130178687;
9. an Enfield No. 4Mk1, .303 caliber rifle, bearing serial number 8840;
10. a Swiss Schmidt-Rubin, 7.5mm rifle, bearing serial number 187328; or
11. a Yugoslavian Zastava, 7.62x25mm pistol, bearing serial number 237879.

In order to find that the government has proven this element, you must unanimously agree that defendant knowingly possessed the miscellaneous rifle ammunition or at least one of the firearms described above, and you will be required to answer which item or items you unanimously agree that defendant knowingly possessed in the Interrogatory Form.

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INSTRUCTION NO. 13 (Cont'd)

Three, the ammunition or firearm(s) for which you have unanimously found that defendant knowingly possessed was/were transported across a state line at some time during or before defendant's possession of it/them.

You are instructed that the government and defendant have agreed that defendant has been convicted of a crime punishable by imprisonment for more than one year under the laws of the State of Missouri, and you must consider the first element as proven.

You are also instructed that the government and defendant have agreed that the miscellaneous rifle ammunition and firearms were not manufactured in the State of Iowa, and would have had to cross a state line and travel in interstate commerce to arrive in Iowa, and you must consider the third element as proven.

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

If the government proves all of these elements beyond a reasonable doubt, then you must find defendant guilty of the crime charged under Count 1. Otherwise, you must find defendant not guilty of the crime charged under Count 1.

INSTRUCTION NO. 14

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.

INSTRUCTION NO. 15

It is not necessary for the government to prove that defendant knew that the ammunition or firearms charged in the Indictment had traveled in interstate commerce, that he personally transported the ammunition or firearms in interstate commerce or that he intended to violate a particular statute. Likewise, it is not necessary for the government to prove that defendant knew that it was illegal to have the ammunition or firearms in his possession within the meaning of the law. Nor is it necessary for the government to prove who owned the ammunition or firearms at any time. The statutes speak in terms of possession, not ownership.

INSTRUCTION NO. 16

The government is not required to prove that defendant knew that his acts or omissions were unlawful. An act is done "knowingly" if a defendant is aware of the act and did not act through ignorance, mistake or accident. You may consider the evidence of defendant's acts and words, along with other evidence, in deciding whether defendant acted knowingly.

INSTRUCTION NO. 17

You will note that the Indictment charges that the offense was committed "on or about" a certain date. The government need not prove with certainty the exact date or the exact time period of the offense charged. It is sufficient if the evidence establishes that the offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NO. 18

You must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back lengthy testimony.

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 19

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 an agreement if you can do so without violence to individual judgment, because your 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 your verdict.

Third, if 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 Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

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INSTRUCTION NO. 19 (Cont'd)

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. Your 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.

INSTRUCTION NO. 20

Attached to these instructions you will find the Verdict Form and Interrogatory Form. These are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Form and Interrogatory Form must be the unanimous decisions of the Jury.

You will take the Verdict Form and Interrogatory Form to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Form and Interrogatory Form, your foreperson will fill out the Verdict Form and Interrogatory Form, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Form and Interrogatory Form in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the Jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Form and Interrogatory Form in accord with the evidence and these instructions.

3-25-14
Date

Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa