

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW ROBBINS,

Defendant.

No. CR 14-129-MWB

**INSTRUCTIONS  
TO THE JURY**

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**VERDICT FORM**

## No. 1 — INTRODUCTION

Congratulations on your selection as a juror! These Instructions are to help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged defendant Matthew Robbins with two offenses arising from his alleged illegal possession of a firearm and ammunition. An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to the crimes charged against him, and he is presumed absolutely not guilty of each offense charged, unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the defendant's guilt on each offense charged against him beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Remember, only defendant Matthew Robbins, and not anyone else, is on trial. Also, the defendant is on trial *only* for the offenses charged against him in the Indictment, and not for anything else.

Remember that each count charges a separate crime. You must consider each charge separately and return a separate, unanimous verdict on each charge.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

## **No. 2 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF**

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court
- This presumption remains with the defendant throughout the trial
- This presumption is enough, alone, for you to find the defendant not guilty of each offense charged against him, unless the prosecution proves, beyond a reasonable doubt, all of the elements of that offense

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict
- This burden means that you must find the defendant not guilty of a particular offense charged against him, unless the prosecution proves

beyond a reasonable doubt that he has committed each and every element of that offense

### **No. 3 — REASONABLE DOUBT**

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence
- A reasonable doubt may arise from the prosecution's lack of evidence

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all of the evidence in the case before making a decision
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs

The prosecution's burden is heavy, but it does not require proof beyond all doubt.

## No. 4 — OTHER IMPORTANT TERMS

Before I turn to specific instructions on the offenses charged in this case, I will explain some important terms.

### *Elements*

Each offense charged consists of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of a particular offense against the defendant for you to find him guilty of that offense.

### *Timing*

The Indictment alleges an approximate time period for each charged offense.

- The prosecution does not have to prove that a particular offense occurred on an exact date.
- The prosecution only has to prove that an offense occurred at a time that was reasonably close to or within the period alleged for that offense in the Indictment.

### *Location*

You must decide whether the defendant’s conduct occurred in the Northern District of Iowa. Ely, Cedar Rapids, and Linn County are in the Northern District of Iowa.

### *Possession*

A person possessed something if both of the following are true:

- the person knew about it, and
- the person had
  - physical control over it, or
  - the power, or ability, and the intention to control it, or
  - control over a place in which it was concealed

More than one person may have possessed something at the same time.

\* \* \*

I will now give you the “elements” instructions on the charged offenses.  
The “elements” themselves are set out in **bold**.

**No. 5 — COUNT 1: POSSESSION OF A STOLEN  
FIREARM**

**Count 1** of the Indictment charges the defendant with “possession of a stolen firearm.” The defendant denies that that he committed this offense.

For you to find the defendant guilty of “possession of a stolen firearm,” the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:

***One*, from about April 18, 2014 through June 3, 2014, the defendant knowingly possessed a firearm.**

“Possession” was defined for you in Instruction No. 4. The firearm that the defendant allegedly possessed is a Kimber .45 caliber handgun, bearing serial number K389332.

- You must unanimously agree that the defendant possessed the firearm charged in the Indictment for this element to be proved
- It is not enough for the prosecution to prove that the defendant possessed some other stolen firearm

***Two*, at the time that the defendant possessed the firearm, the firearm had been stolen.**

A firearm was “stolen,” if it was taken from the owner

- without the owner’s knowledge or permission, and

- with the intent to deprive the owner, temporarily or permanently, of the possession or use of the firearm

The prosecution does not have to prove that the defendant is the person who stole the firearm in question.

***Three, at the time that the defendant possessed the firearm, he knew or had reasonable cause to believe that the firearm was stolen.***

The prosecution must prove

- that the defendant actually knew that the firearm was stolen, or
- that the defendant had reasonable cause to believe that the firearm was stolen
  - It is not enough for the prosecution to prove that a reasonable person, in the defendant's circumstances, would have believed that the firearm was stolen
  - The prosecution must prove that it would have been reasonable for the defendant, in particular, to believe that the firearm was stolen

***Four, the stolen firearm that the defendant possessed had been transported across a state line at some time before the defendant possessed it.***

The parties have stipulated—that is, they have agreed—that, at some time prior to April 18, 2014, the firearm at issue was transported across state lines, if the defendant did, indeed, possess that firearm. Therefore, you must consider this element to be proved.

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of the “possession of a stolen firearm” offense charged in **Count 1**.

**No. 6 — COUNT 2: ILLEGAL POSSESSION OF A  
FIREARM AND AMMUNITION**

**Count 2** of the Indictment charges the defendant with an “illegal possession of a firearm and ammunition” offense. The defendant denies that that he committed this offense.

***One***, from about **April 18, 2014**, through **June 3, 2014**, the defendant ***either*** (a) had been convicted of one or more felony offenses, ***or*** (b) was an unlawful user of one or more illegal drugs.

For you to find that this element has been proved, the prosecution must prove one or both of the following:

- the defendant had previously been convicted of a felony offense
  - the parties have stipulated—that is, they have agreed—that, at some time prior to April 18, 2014, the defendant had been convicted of one or more felony offenses
  - you must consider this alternative to be proved

*and/or*

- the defendant was then an unlawful user of an illegal drug, either or both
  - methamphetamine, and/or
  - marijuana

A defendant was “an unlawful user of an illegal drug,” if

- he used an illegal drug in a manner other than as prescribed by a licensed physician, *and*
- he was actively engaged in use of that illegal drug during the time that he possessed the firearm or ammunition

The prosecution does not have to prove

- that the defendant used the illegal drug at the precise time that he possessed the firearm or ammunition
- that the defendant used the drug on a particular day or within a matter of days or weeks before he possessed the firearm or ammunition, but does have to prove that the drug use was recent enough to indicate that he was actively engaged in the use of the illegal drug at the time that he possessed the firearm or ammunition

You may infer that the defendant was an unlawful user of an illegal drug from evidence of a pattern of use or possession of an illegal drug that reasonably covers the time that the defendant possessed the firearm or ammunition

The prosecution does not have to prove that the defendant was *both* previously convicted of one or more felony offenses *and* an unlawful user of *both* illegal drugs. It is enough if the prosecution proves that the defendant was previously convicted of one or more felony offenses *or* was an unlawful user of *one* illegal drug. You must unanimously agree, however, which one or more of these alternatives, if any, have been proved.

**Two, from about April 18, 2014, through June 3, 2014, the defendant knowingly possessed the firearm and/or ammunition identified in the Indictment.**

“Possession” was defined for you in Instruction No. 4. The Indictment alleges that the defendant possessed one or more of the following:

- a Kimber .45 caliber handgun, bearing serial number K389332
- sixteen Hornady .45 caliber hollow point bullets
- six Winchester 12 gauge slug shotgun shells
- one Federal 12 gauge birdshot shotgun shell

The prosecution does not have to prove that the defendant possessed all of these items. It is enough for the prosecution to prove that a convicted felon or an illegal drug user possessed a single firearm or a single round of ammunition. However,

- for this element to be proved, you must unanimously agree which one or more of the items charged in the Indictment the defendant possessed
- it is not enough for the prosecution to prove that the defendant possessed some other firearm or some other ammunition

The prosecution does not have to prove

- that the defendant knew that he was prohibited from possessing a firearm or ammunition
- who “owned” the firearm or ammunition

***Three, the firearm and/or ammunition that the defendant illegally possessed had been transported across a state line at some time before the defendant possessed it.***

The parties have stipulated—that is, they have agreed—that, at some time prior to April 18, 2014, the firearm and ammunition charged in the Indictment were transported across state lines, if the defendant did, indeed, possess any of them. You must consider this element to be proved.

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of the “illegal possession of a firearm and ammunition” offense charged in **Count 2**.

## No. 7 — DEFINITION OF EVIDENCE

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did

- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
  - An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide.

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

## **No. 8 — EVIDENCE OF UNCHARGED MISCONDUCT**

You may hear evidence that the defendant possessed one or more firearms other than and in addition to the firearm charged in the Indictment.

- Consider this evidence only if you unanimously find that it is more likely true than not true; otherwise, disregard it
  - “More likely true than not true” is a lower standard than proof beyond a reasonable doubt
- If you find that you can consider such evidence, you may consider it to help you decide whether the defendant knowingly possessed the firearm charged in the Indictment
- There may also be evidence that the defendant stored one of the other firearms in a manner similar to the way in which he stored the ammunition at issue in **Count 2**. If you find that you can consider such evidence, you may consider whether the similarity suggests that the same person who possessed that firearm also possessed the ammunition
- Evidence of possession of other firearms cannot be used to show that the defendant has a propensity, inclination, or tendency to commit crimes

Remember,

- As with all other evidence, the weight to give such evidence is for you to decide
- You cannot convict a person simply because he may have committed similar acts in the past
- The defendant is on trial only for the crimes charged in this case
- You may consider the evidence of other similar acts only for the purpose identified above

## No. 9 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the witness's

- Opportunity to have seen and heard what happened
- Memory. Memory is not an exact recording of past events and witnesses may misremember events and conversations. Scientific research has established
  - that human memory is not at all like video recordings that a witness can simply replay to remember precisely what happened
  - that when a witness has been exposed to statements, conversations, questions, writings, documents, photographs, media reports, and opinions of others, the accuracy of their memory may be affected and distorted
  - that a witness's memory, even if testified to in good faith, and with a high degree of confidence, may be inaccurate, unreliable, and falsely remembered; thus, human memory can be distorted, contaminated, changed, and events and conversations can even be falsely imagined
  - that distortion, contamination, and falsely imagined memories may happen at each of the three stages of memory: acquisition (perception of events); storage (period of time between

acquisition and retrieval); and retrieval (recalling stored information).

- Demeanor. Scientific research has established
  - that there is not necessarily a relationship between how confident witnesses are about their testimony and the accuracy of their testimony; thus, less confident witnesses may be more accurate than confident witnesses
  - that common cultural cues, like shifty eyes, shifty body language, the failure to look one in the eye, grimaces, stammering speech, and other mannerisms, are not necessarily correlated to witness deception or false or inaccurate testimony
- Motives for testifying
- Interest in the outcome of the case
- Drug or alcohol use or addiction, if any
- The reasonableness of the witness's testimony

In evaluating a witness's testimony, also consider the following:

- Any differences between what the witness says now and said earlier
- Any inconsistencies between the witness's testimony and any other evidence that you believe
- Whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or, are instead, the result of lies or phony memory lapses, and

- Any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is

- a public official or law enforcement officer
- an expert

You may give any witness's opinion whatever weight you think it deserves, but you should consider

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

You must consider with greater caution and care the testimony, if any, of a witness testifying after a promise from the prosecution not to use that witness's testimony, to a grand jury or at this trial, against that witness in a criminal case. It is for you to decide

- what weight you think the testimony of such a witness deserves
- whether or not such a witness's testimony has been influenced by the prosecution's promise

Remember, it is your exclusive right to give any witness's testimony whatever weight you think it deserves.

## **No. 10 — OBJECTIONS**

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

## **No. 11 — BENCH CONFERENCES**

During the trial it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

## No. 12 — NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

### No. 13 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.
- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell

them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.

- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on “implicit biases.” As we discussed during jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes—that is, “implicit biases”—that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- A Verdict Form is attached to these Instructions. A Verdict Form is simply a written notice of your decision. After your deliberations, if you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question. You will all sign that copy to indicate that you agree with the verdict and that it is unanimous. Your foreperson

will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict.

- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

## No. 14 — DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. However, before you make that judgment, you must consult with one another and try to reach agreement, if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has *not* proved beyond a reasonable doubt that the defendant is guilty of a particular charge, say so
- If you are convinced that the prosecution *has* proved beyond a reasonable doubt that the defendant is guilty of a particular charge, say so
- Don't give up your honest beliefs just because others think differently or because you simply want to be finished with the case
- On the other hand, do not hesitate to re-examine your own views and to change your opinions, if you are convinced that they are wrong
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict

based solely on the evidence, reason, your common sense, and these instructions

- You must consider all of the evidence bearing on each question before you
- Take all the time that you feel is necessary
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case

## **No. 15 — DUTY DURING DELIBERATIONS**

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of one or more of the charges, I will decide what his sentence should be.
- Communicate with me by sending me a note through a CSO. The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex. To emphasize the importance of this requirement, the verdict form

contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your verdict.

- Complete the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 20th day of April, 2015.



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MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW ROBBINS,

Defendant.

No. CR 14-129-MWB

**VERDICT FORM**

As to defendant Matthew Robbins, we, the Jury, find as follows:

<b>COUNT 1: POSSESSION OF A STOLEN FIREARM</b>		<b>VERDICT</b>
<b>Verdict</b>	On the “possession of a stolen firearm” offense, as charged in <b>Count 1</b> and explained in Instruction No. 5, please mark your verdict. <i>(Please go on to consider your verdict on Count 2.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty
<b>COUNT 2: FELON AND DRUG USER IN POSSESSION OF A FIREARM OR AMMUNITION</b>		<b>VERDICT</b>
<b>Step 1: Verdict</b>	On the “felon and drug user in possession of a firearm or ammunition” offense, as charged in <b>Count 2</b> and explained in Instruction No. 6, please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the question in Step 2. Instead, please read the “Certification,” below, sign the Verdict Form, and notify the CSO that you have reached a verdict. On the other hand, if you find the defendant “guilty” of this offense, please go on to Step 2.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty

<p><b>Step 2: Prohibited Status(es)</b></p>	<p><i>If you found the defendant “guilty” of the offense charged in <b>Count 2</b> in <b>Step 1</b>, please indicate whether you find him guilty of prohibited possession based on his prior felony conviction, his illegal drug use (and whether he used methamphetamine, marijuana, or both), or both his prior felony conviction and his use of illegal drugs. (After answering this question, please go on to consider the question in <b>Step 3</b>.)</i></p>
	<p>___ prior conviction of a felony offense</p>
	<p>___ illegal drug use (involving use of ___ methamphetamine, ___ marijuana, or ___ both methamphetamine and marijuana)</p>
	<p>___ both a prior conviction and illegal drug use (involving use of ___ methamphetamine, ___ marijuana, or ___ both methamphetamine and marijuana)</p>
<p><b>Step 3: Item(s) Possessed</b></p>	<p><i>If you found the defendant “guilty” of this offense in <b>Step 1</b>, please indicate which one or more of the following items the defendant possessed after a felony conviction or while an illegal drug user. (After answering this question, please read the “Certification,” below, sign the Verdict Form, and notify the CSO that you have reached a verdict.)</i></p>
	<p>___ a Kimber .45 caliber handgun, bearing serial number K389332</p>
	<p>___ sixteen rounds of Hornady .45 caliber hollow point bullets</p>
	<p>___ six Winchester 12-gauge slug shotgun shells</p>
	<p>___ one Federal 12-gauge birdshot shotgun shells</p>
<p><b>CERTIFICATION</b></p>	
<p>By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would returned the same verdict for or against the defendant on the charged offenses regardless of the race, color, religious beliefs, national origin, or sex of the defendant.</p>	

\_\_\_\_\_ Date

\_\_\_\_\_ Foreperson

\_\_\_\_\_ Juror

Juror	Juror

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW ROBBINS,

Defendant.

No. CR 14-129-MWB

**COURT’S PROPOSED  
INSTRUCTIONS  
TO THE JURY**

(04/15/15 SECOND REVISED  
“ANNOTATED” VERSION)

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**VERDICT FORM**

## No. 16 — INTRODUCTION<sup>1</sup>

Congratulations on your selection as a juror! These Instructions are to help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged defendant Matthew Robbins with two offenses arising from his alleged illegal possession of a firearm and ammunition.<sup>2</sup> An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to the crimes charged against him, and he is presumed absolutely not guilty of each offense charged, unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the defendant’s guilt on each offense charged against him beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations,

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<sup>1</sup> *Compare* 8th Cir. Criminal Model 1.01; Joint Proposed Jury Instruction Nos. 1-3, 15. For many years, I have *not* given separate preliminary and final jury instructions. Rather, before opening statements, I provide the jurors with “front-end loaded” instructions that explain all of the issues that we can reasonably anticipate and the “elements” in the charged offenses. I reserve only the last two instructions, on deliberations, to read after the parties’ closing arguments. In rare circumstances, where either unexpected issues arise during trial or I must assess the adequacy of certain evidence before instructing on an issue, I give “supplemental” instructions during the trial or at the close of the evidence. I have prepared such “supplemental” instructions in this case on the “consciousness of guilt” issues, “flight” and “witness contact.”

<sup>2</sup> I do not find it necessary to reiterate more specifically the two offenses with which the defendant is charged. Rather, the charged offenses will be addressed with particularity in the “elements” instructions.

gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Remember, only defendant Matthew Robbins, and not anyone else, is on trial. Also, the defendant is on trial *only* for the offenses charged against him in the Indictment, and not for anything else.

Remember that each count charges a separate crime. You must consider each charge separately and return a separate, unanimous verdict on each charge.<sup>3</sup>

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

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<sup>3</sup> This paragraph addresses the issue of separate consideration of each charge against the defendant, when multiple offenses are charged.

**No. 17 — PRESUMPTION OF INNOCENCE AND  
BURDEN OF PROOF<sup>4</sup>**

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court
- This presumption remains with the defendant throughout the trial
- This presumption is enough, alone, for you to find the defendant not guilty of each offense charged against him, unless the prosecution proves, beyond a reasonable doubt, all of the elements of that offense

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict

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<sup>4</sup> Compare 8th Cir. Criminal Model 3.05; Joint Proposed Jury Instruction No. 15.

- This burden means that you must find the defendant not guilty of a particular offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense

## No. 18 — REASONABLE DOUBT<sup>5</sup>

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence
- A reasonable doubt may arise from the prosecution's lack of evidence

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all of the evidence in the case before making a decision
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs

The prosecution's burden is heavy, but it does not require proof beyond all doubt.<sup>6</sup>

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<sup>5</sup> Compare 8th Cir. Criminal Model 3.11; Joint Proposed Jury Instruction No. 13.

<sup>6</sup> The prosecution requests that I add "possible" between "all" and "doubt." This addition is unnecessary, because "all doubt" necessarily includes "all possible doubt," and the addition would just add a superfluous word.

## No. 19 — OTHER IMPORTANT TERMS<sup>7</sup>

Before I turn to specific instructions on the offenses charged in this case, I will explain some important terms.

### *Elements*

Each offense charged consists of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of a particular offense against the defendant for you to find him guilty of that offense.<sup>8</sup>

### *Timing<sup>9</sup>*

The Indictment alleges an approximate time period for each charged offense.

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<sup>7</sup> I recognize that 8th Cir. Criminal Model 7.05 provides an instruction on “proof of intent or knowledge.” *Compare* Joint Proposed Jury Instruction No. 20. In late 2001, during one of my numerous attempts to refine and streamline my stock jury instructions, I stopped giving the second paragraph of that model, concerning inferring intent from the natural and probable consequences of acts knowingly done. At that time, I explained that I had deleted that language, because I simply did not believe that it was helpful to the jury, and I doubted that jurors would understand what it meant. In approximately late 2009, I stopped giving any instruction at all on “knowledge” and “intent” as unnecessary and unhelpful to the jury. I do not find 8th Cir. Criminal Model 7.05, or any part of it, to be either necessary or helpful here. *See United States v. Iron Eyes*, 367 F.3d 781, 785 (8th Cir. 2004) (“In our circuit, . . . a trial judge is not required to give the jury such a definition [of ‘knowingly’ or ‘knowing’] because the definition is ‘a matter of common knowledge.’” (quoting *United States v. Brown*, 33 F.3d 1014, 1017 (8th Cir. 1994))).

<sup>8</sup> Judges and attorneys take for granted that an offense has “elements,” but this concept may not be so obvious to lay jurors.

<sup>9</sup> *Compare* Joint Proposed Jury Instruction No. 22.

- The prosecution does not have to prove that a particular offense occurred on an exact date.
- The prosecution only has to prove that an offense occurred at a time that was reasonably close to or within the period alleged for that offense in the Indictment.

### ***Location***

You must decide whether the defendant's conduct occurred in the Northern District of Iowa. Ely, Cedar Rapids, and Linn County are in the Northern District of Iowa.<sup>10</sup>

### ***Possession***<sup>11</sup>

A person possessed something if both of the following are true:

- the person knew about it, and
- the person had
  - physical control over it, or

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<sup>10</sup> *The parties are requested to provide information about the town(s) or count(ies) in which the criminal offenses allegedly occurred. The prosecution has explained that the towns and county in question are Ely, Cedar Rapids, and Linn County.*

<sup>11</sup> 9th Cir. Criminal Model 3.18 (modified and recast in past tense); *compare* 8th Cir. Criminal Model 8.02; Joint Proposed Jury Instruction No. 18.

- the power, or ability,<sup>12</sup> and the intention to control it, or
- control over a place in which it was concealed<sup>13</sup>

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<sup>12</sup> See *United States v. Zoch*, No. CR 11-4031-MWB (N.D. Iowa Nov. 16, 2011) (docket no. 55-1) (giving an explanation of “power” in terms of “ability” in answer to a jury question).

<sup>13</sup> This explanation is consistent with numerous decisions of the Eighth Circuit Court of Appeals. See, e.g., *United States v. Goodrich*, 739 F.3d 1091, 1097 (8th Cir. 2014) (“Constructive possession is established by proof that the defendant had control over the place where the firearm was located, or control, ownership, or dominion of the firearm itself.” (quoting *United States v. Brown*, 634 F.3d 435, 439 (8th Cir. 2011))). I recognize that the Eighth Circuit Court of Appeals has also stated, “[C]onstructive possession generally requires knowledge of an object, the ability to control it, and the intent to do so.” *United States v. Chantharath*, 705 F.3d 295, 304 (8th Cir. 2013) (quoting *United States v. Pazour*, 609 F.3d 950, 952–53 (8th Cir. 2010)). Nevertheless, the “intent to control” requirement is not necessarily “intent to exercise control over the firearm,” but may be “intent and ability to exercise control over [the firearm] or the place where it is kept.” *United States v. Kent*, 531 F.3d 642, 652 (8th Cir. 2008) (emphasis added) (quoting *United States v. Robertson*, 519 F.3d 452, 455 (8th Cir. 2008)). Also, even when “intent to control” is expressly identified as a requirement, it is not always explicitly considered in determining the sufficiency of the evidence of constructive possession. See, e.g., *Chantharath*, 705 F.3d at 304 (finding sufficient evidence of constructive possession of a firearm where the defendant was the registered tenant of the house and apartment where the firearms were discovered and he acknowledged possession of a firearm at the house when he sent another person to retrieve a bag that the defendant claimed contained firearms). Furthermore, the Eighth Circuit Court of Appeals has recognized that, where “constructive possession requires evidence that a defendant knowingly had the power and intention to exercise control over a firearm,” “[s]uch possession may be established by showing the defendant had dominion over the premises where the firearm is kept.” *United States v. Saddler*, 538 F.3d 879, 888 (8th Cir. 2008). Where it is proper to infer “intent to control” a firearm or the place where it is found from “knowledge” of the firearm and “dominion” (or “control”) of the firearm or the place where the firearm is found, it is not necessary to state “intent to control” the firearm or the place where it is found as an express requirement of constructive possession.

More than one person may have possessed something at the same time.<sup>14</sup>

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I will now give you the “elements” instructions on the charged offenses. The “elements” themselves are set out in **bold**.

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<sup>14</sup> The prosecution requests the addition of an instruction defining “sole” and “joint” possession, as set out in 8th Cir. Criminal Model 8.02. I find that addition unnecessary, because instructing that “[m]ore than one person may have possessed something at the same time” adequately addresses the concepts of “sole” and “joint” possession.

**No. 20 — COUNT 1: POSSESSION OF A STOLEN  
FIREARM<sup>15</sup>**

**Count 1** of the Indictment charges the defendant with “possession of a stolen firearm.” The defendant denies that that he committed this offense.

For you to find the defendant guilty of “possession of a stolen firearm,” the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:

***One, from about April 18, 2014 through June 3, 2014, the defendant knowingly possessed a firearm.***<sup>16</sup>

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<sup>15</sup> There is no Eighth Circuit model for an offense in violation of 18 U.S.C. § 922(j). The elements of the offense, however, are similar to those of a “felon in possession of a firearm” offense, with the exceptions that the firearms must be stolen, the defendant does not have to have a prior felony conviction, and the scienter element requires proof that the defendant “knew or had reasonable cause to believe the firearm was stolen.” *See United States v. Iron Eyes*, 367 F.3d 781, 784-85 (8th Cir. 2004); 19 U.S.C. § 922(j). I believe that it is appropriate to separate the *fact* that the firearm was “stolen” from the scienter requirement that the defendant knew or had reasonable cause to believe that the firearm was stolen.

<sup>16</sup> Joint Proposed Jury Instruction No. 16 addresses possessing, receiving, concealing, and storing a stolen firearm. *Compare* 18 U.S.C. § 922(j) (making it “unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition . . . .”). **Count 1** of the Second Superseding Indictment, however, only charges that the defendant “possessed a stolen firearm.” *I will only instruct on the alternative charged in the Second Superseding Indictment.*

The parties have offered an instruction on the definition of “firearm,” adding that the parties agree that the Kimber .45 caliber handgun meets that definition. *See* Joint Proposed Jury Instruction No. 16. ***Because the parties do not dispute whether or not the Kimber .45 caliber handgun meets the definition of “firearm,” I find it unnecessary***

“Possession” was defined for you in Instruction No. 4. The firearm that the defendant allegedly possessed is a Kimber .45 caliber handgun, bearing serial number K389332.

- You must unanimously agree that the defendant possessed the firearm charged in the Indictment for this element to be proved
- It is not enough for the prosecution to prove that the defendant possessed some other stolen firearm<sup>17</sup>

**Two, at the time that the defendant possessed the firearm, the firearm had been stolen.**

A firearm was “stolen,” if it was taken from the owner

- without the owner’s knowledge or permission, and
- with the intent to deprive the owner, temporarily or permanently, of the possession or use of the firearm<sup>18</sup>

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*to include either the definition or the stipulation.* Leaving out that unnecessary information will allow the jurors to focus on the disputed issues, such as “possession.”

<sup>17</sup> I indicated on page 18 of my Evidentiary Ruling (docket no. 59) that I might add an instruction—either in these jury instructions or in a supplemental instruction—that, even if there is evidence that Robbins stole or possessed any other firearm besides the Kimber firearm, the jury can only find him guilty of a charged offense if he possessed the Kimber firearm charged in the Second Superseding Indictment.

<sup>18</sup> In *United States v. Tyerman*, 701 F.3d 552, 564-65 (8th Cir. 2012), the Eighth Circuit Court of Appeals held that “intent to permanently deprive” someone of the firearms is *not* an element of a § 922(j) offense, even though it is an element of common-law larceny. Instead, the court held that “stolen” under the statute includes all “wrongful takings,” whether or not the “taking” was with intent to permanently deprive someone

The prosecution does not have to prove that the defendant is the person who stole the firearm in question.<sup>19</sup>

**Three, at the time that the defendant possessed the firearm, he knew or had reasonable cause to believe that the firearm was stolen.**

The prosecution must prove

- that the defendant actually knew that the firearm was stolen, or
- that the defendant had reasonable cause to believe that the firearm was stolen<sup>20</sup>
  - It is not enough for the prosecution to prove that a reasonable person, in the

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of the firearm. *Id.* In so holding, the court relied on *United States v. Bates*, 584 F.3d 1105, 1109 (8th Cir. 2009), and the decision of the Third Circuit Court of Appeals in *United States v. Mobley*, 956 F.2d 450, 454 (3d Cir. 1992), defining “stolen” for purposes of the sentencing guidelines by reference to § 922(j). I have drawn this definition from *Bates*, which defined “stolen” as “include[ing] all felonious or wrongful takings with the intent to deprive the owner of the rights and benefits of ownership, regardless of whether or not the theft constitutes common-law larceny.” 584 F.3d at 1109. However, I have paraphrased “wrongfully taken” as “without the owner’s knowledge or permission,” I have paraphrased “regardless of whether or not the theft constitutes common-law larceny” as “with the intent to deprive the owner, temporarily or permanently . . .,” and I have paraphrased the “rights and benefits of ownership” as “possession and use” of the firearm.

<sup>19</sup> Nothing that I have found in the statute or the case law suggests that the defendant must have been the person who “stole” the firearm. Rather, the Eighth Circuit Court of Appeals has adopted the observation of the Third Circuit Court of Appeals that this statute, in conjunction with the sentencing guidelines at issue in the Third Circuit case, “created a regulatory scheme, whereby Congress intended to restrict the *trade* of stolen firearms.” *Tyerman*, 701 F.3d at 565 (emphasis added) (citing *Mobley*, 956 F.3d at 454).

<sup>20</sup> The explanation of this alternative, in the next three sub-bullets, is drawn from *Iron Eyes*, 367 F.3d at 784-85.

defendant's circumstances, would have believed that the firearm was stolen

- The prosecution must prove that it would have been reasonable for the defendant, in particular, to believe that the firearm was stolen<sup>21</sup>

**Four, the stolen firearm that the defendant possessed had been transported across a state line at some time before the defendant possessed it.**

The parties have stipulated—that is, they have agreed—that, at some time prior to April 18, 2014, the firearm at issue was transported across state lines, if the

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<sup>21</sup> In *Iron Eyes*, the Eighth Circuit Court of Appeals explained that the statute does not involve whether a so-called reasonable person would have believed the firearm was stolen in the circumstances of the case; rather, it states a “subjective” standard that “requires proof that a defendant possessed a gun that it would have been reasonable for him or her, in particular, to believe was stolen.” 367 F.3d at 785. The first and second sub-bullets attempt to address this conclusion. The third sub-bullet of the explanation is based on the instruction requested by the defendant in *Iron Eyes*, because the court rejected the prosecution’s argument that this requested instruction was wrong, *id.* at 784, and observed that “it might be the better practice to give the instruction to ensure that the jury understands exactly how subjective mistakes of fact can negate the mental state required for conviction.” *Id.* at 785. ***This third sub-bullet may not be necessary, if the defendant does not intend to argue that he had a genuine, if mistaken, belief that the firearm was not stolen.*** The defendant has made clear that he does not intend to rely on any genuine, if mistaken, belief that the firearm was not stolen. Therefore, I have removed the former third sub-bullet, which stated, “Thus, if the defendant genuinely, but mistakenly, believed that the firearm was not stolen, then this alternative is not proved, even if a reasonable person would have found his belief to be unreasonable.”

defendant did, indeed, possess that firearm. Therefore, you must consider this element to be proved.<sup>22</sup>

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of the “possession of a stolen firearm” offense charged in **Count 1**.

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<sup>22</sup> It appears that the parties have stipulated that the firearm was transported across state lines. *See* Joint Proposed Jury Instruction No. 16. *I have included this element, despite the fact that it is not disputed, because it is “jurisdictional.” However, if the parties agree, I will not include this element.*

**No. 21 — COUNT 2: ILLEGAL POSSESSION OF A  
FIREARM AND AMMUNITION<sup>23</sup>**

**Count 2** of the Indictment charges the defendant with an “illegal possession of a firearm and ammunition” offense. The defendant denies that that he committed this offense.

**One, from about April 18, 2014, through June 3, 2014, the defendant either (a) had been convicted of one or more felony offenses, or (b) was an unlawful user of one or more illegal drugs.<sup>24</sup>**

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<sup>23</sup> See 8th Cir. Criminal Model No. 6.18.922A; Joint Proposed Jury Instruction No. 17. In anticipation of a Third Superseding Indictment, adding possession of shotgun shells and .45 caliber ammunition to this count, I have decided to refer to this offense as “illegal possession of a firearm and ammunition” and to make other appropriate changes to the model and the Joint Proposed Jury Instruction.

<sup>24</sup> Compare Joint Proposed Jury Instruction No. 17, element *two*. I believe that it is clearer to state the “prohibited status” element before the “possession” element.

**In an e-mail dated April 8, 2014, I advised the parties that, because Robbins had stipulated that he is a felon, I believed that it was totally unnecessary to instruct on a second way in which he could be convicted on this charge, that is, as a drug user in possession of a firearm. I also stated that I doubted that I would actually instruct on the “drug user” alternative unless the prosecution could convince me that it was error not to do so. The prosecution responded that the defendant was charged, and should be tried, on the charges brought by the grand jury, and that it is improper to require the prosecution to elect one theory of prosecution, citing, *inter alia*, *United States v. Platter*, 514 F.3d 782 (8th Cir. 2008). In *Platter*, the court recognized both that “the district court has discretion to require the government to elect between multiple counts of an indictment,” when the counts are multiplicitous, and that the prosecution has “broad discretion” to pursue alternative theories of liability on a single charge. 514 F.3d at 786-87. In *Platter*, as in this case, the defendant had stipulated to his prior felony convictions, *id.* at 785, but the court found that the district court had not abused its discretion in refusing to submit only that alternative, and not the “drug user” alternative, for a § 922(g) offense to the jury, *id.* at 787. More specifically, the court held that evidence that the defendant**

For you to find that this element has been proved, the prosecution must prove one or both of the following:

- the defendant had previously been convicted of a felony offense<sup>25</sup>
  - the parties have stipulated—that is, they have agreed—that, at some time prior to April 18, 2014, the defendant had been convicted of one or more felony offenses
  - you must consider this alternative to be proved

*and/or*

- the defendant was then an unlawful user of an illegal drug, either or both
  - methamphetamine, and/or
  - marijuana<sup>26</sup>

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was a drug user “resulted in minimal prejudice.” *Id.* at 788. Were I writing on a clean slate, I would hold that evidence of drug use is substantially prejudicial *to the jury’s determination of whether or not the defendant in fact possessed the firearm in question*, not just to whether or not he was a felon. *Compare id.* at 788. Nevertheless, I find that the evidence of drug use in this case is not likely to be substantially more extensive or more prejudicial than the evidence of drug use in *Platter* and that this is not one of the “exceptional cases” in which it is appropriate to require the prosecution to choose one of the alternative statuses charged in this offense. *Id.* at 787.

<sup>25</sup> It appears that the parties have stipulated that the defendant was previously convicted of one or more felony offenses. *See* Joint Proposed Jury Instruction No. 17.

<sup>26</sup> **Count 2** of the Second Superseding Indictment charges that the defendant was an unlawful user of both methamphetamine and marijuana. Joint Proposed Jury

A defendant was “an unlawful user of an illegal drug,” if

- he used an illegal drug in a manner other than as prescribed by a licensed physician, *and*
- he was actively engaged in use of that illegal drug during the time that he possessed the firearm or ammunition

The prosecution does not have to prove

- that the defendant used the illegal drug at the precise time that he possessed the firearm or ammunition
- that the defendant used the drug on a particular day or within a matter of days or weeks before he possessed the firearm or ammunition, but does have to prove that the drug use was recent enough to indicate that he was actively engaged in the use of the illegal drug at the time that he possessed the firearm or ammunition

You may infer that the defendant was an unlawful user of an illegal drug from evidence of a pattern of use or possession of an illegal drug that reasonably covers the time that the defendant possessed the firearm or ammunition<sup>27</sup>

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Instruction No. 17 is less consistent about references to both methamphetamine and marijuana. I have included both.

<sup>27</sup> 8th Cir. Criminal Model 6.18.922B (third unnumbered paragraph after element *three*). The parties have not included any of this explanation, but I believe that, at least

The prosecution does not have to prove that the defendant was *both* previously convicted of one or more felony offenses *and* an unlawful user of *both* illegal drugs. It is enough if the prosecution proves that the defendant was previously convicted of one or more felony offenses *or* was an unlawful user of *one* illegal drug. You must unanimously agree, however, which one or more of these alternatives, if any, have been proved.

**Two, from about April 18, 2014, through June 3, 2014, the defendant knowingly possessed the firearm and/or ammunition identified in the Indictment.**

“Possession” was defined for you in Instruction No. 4. The Indictment alleges that the defendant possessed one or more of the following:

- a Kimber .45 caliber handgun, bearing serial number K389332
- sixteen Hornady .45 caliber hollow point bullets
- six Winchester 12 gauge slug shotgun shells
- one Federal 12 gauge birdshot shotgun shell

The prosecution does not have to prove that the defendant possessed all of these items. It is enough for the prosecution to prove that a convicted felon or an illegal drug user possessed a single firearm or a single round of ammunition. However,

- for this element to be proved, you must unanimously agree which one or more of the

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from what I know about the case at this point, this further explanation is likely to be helpful to the jurors.

items charged in the Indictment the defendant possessed

- it is not enough for the prosecution to prove that the defendant possessed some other firearm or some other ammunition<sup>28</sup>

The prosecution does not have to prove

- that the defendant knew that he was prohibited from possessing a firearm or ammunition
- who “owned” the firearm or ammunition<sup>29</sup>

**Three, the firearm and/or ammunition that the defendant illegally possessed had been transported across a state line at some time before the defendant possessed it.**<sup>30</sup>

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<sup>28</sup> I indicated on page 18 of my Evidentiary Ruling (docket no. 59) that I might add an instruction—either in these jury instructions or in a supplemental instruction—that, even if there is evidence that Robbins stole or possessed any other firearm besides the Kimber firearm, the jury can only find him guilty of a charged offense if he possessed the Kimber firearm charged in the Second Superseding Indictment. I have modified the instruction to include the insufficiency of evidence that the defendant possessed some other ammunition, in light of the modification of the charge in **Count 2**.

Again, the parties have offered an instruction on the definition of “firearm,” adding that the parties agree that the Kimber .45 caliber handgun meets that definition. *See* Joint Proposed Jury Instruction No. 17. ***Because the parties do not dispute whether or not the Kimber .45 caliber handgun meets the definition of “firearm,” I find it unnecessary to include either the definition or the stipulation.*** Doing so will allow the jurors to focus on the disputed issues, such as “possession.”

<sup>29</sup> *Compare* Joint Proposed Jury Instruction No. 19. “[O]wnership is not relevant to the offense in question.” *United States v. Hawkins*, 215 F.3d 858, 860 (8th Cir. 2000) (citing 18 U.S.C. § 922(g)).

<sup>30</sup> It appears from the defendants’ proffered jury instructions on this offense that they are willing to stipulate that the firearm was transported across state lines. *See* Joint

The parties have stipulated—that is, they have agreed—that, at some time prior to April 18, 2014, the firearm and ammunition charged in the Indictment were transported across state lines, if the defendant did, indeed, possess any of them. You must consider this element to be proved

If the prosecution *does not* prove all of these elements beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of the “illegal possession of a firearm and ammunition” offense charged in **Count 2**.

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Proposed Jury Instruction No. 17. *I have included this element, despite the fact that it is not disputed, because it is “jurisdictional.” However, if the parties agree, I will not include this element.*

## No. 22 — DEFINITION OF EVIDENCE<sup>31</sup>

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you<sup>32</sup>
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved<sup>33</sup>

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

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<sup>31</sup> My “plain language” jury instructions. *See* 8th Cir. Criminal Model 1.03; Joint Proposed Jury Instruction No. 4.

<sup>32</sup> *Compare* Joint Proposed Jury Instruction No. 12.

<sup>33</sup> *Compare* Joint Proposed Jury Instruction No. 6.

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
  - An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide.<sup>34</sup>

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

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<sup>34</sup> See 8th Cir. Civil Model 1.03 (2014) (modified) and 9th Cir. Criminal Model 1.9 (modified); *but see* 8th Cir. Criminal Model 1.04 (suggesting that definitions of direct and circumstantial evidence are ordinarily not required); *and compare* Joint Proposed Jury Instruction No. 5.

**No. 23 — EVIDENCE OF UNCHARGED  
MISCONDUCT<sup>35</sup>**

You may hear evidence that the defendant possessed one or more firearms other than and in addition to the firearm charged in the Indictment.

- Consider this evidence only if you unanimously find that it is more likely true than not true; otherwise, disregard it
  - “More likely true than not true” is a lower standard than proof beyond a reasonable doubt
- If you find that you can consider such evidence, you may consider it to help you decide whether the defendant knowingly possessed the firearm charged in the Indictment<sup>36</sup>

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<sup>35</sup> Compare 8th Cir. Criminal Models 2.08; Joint Proposed Jury Instruction No. 14. This instruction focuses on use of such evidence for Rule 404(b) purposes *other than* “identity.” See 8th Cir. Criminal Model 2.08 (model for evidence offered for purposes other than “identity”); 8th Cir. Criminal Model 2.09 (model for evidence offered for purposes of “identity”). Like Joint Proposed Jury Instruction No. 14, it is limited to evidence of possession of other firearms. The prosecution has suggested that evidence of the defendant’s storage of a sawed-off shotgun in a tube sock may be relevant to show “identity” as to the anticipated amendment of **Count 2**, which will purportedly add possession of shotgun shells, because the shotgun shells were also found in a tube sock. I will address modification of this instruction to include “identity,” as appropriate, when and if a Third Superseding Indictment is filed and I revisit the admissibility of evidence relating to the sawed-off shotgun.

<sup>36</sup> The only Rule 404(b) purpose that the parties have identified for the evidence of possession of other firearms is “knowledge.” See Joint Proposed Jury Instruction No. 14.

- There may also be evidence that the defendant stored one of the other firearms in a manner similar to the way in which he stored the ammunition at issue in **Count 2**. If you find that you can consider such evidence, you may consider whether the similarity suggests that the same person who possessed that firearm also possessed the ammunition<sup>37</sup>

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<sup>37</sup> On April 15, 2015, by e-mail to member of my staff, the prosecution reminded me about the previous footnote concerning revisiting the issue of the admissibility of evidence that the defendant had possessed a “sawed-off shotgun” after the filing of the Third Superseding Indictment. The defendant pointed out, in the course of a responsive e-mail, that he understood my Evidentiary Ruling (docket no. 59) to require the prosecution to demonstrate an adequate basis for admission of the evidence of the sawed-off shotgun, but even then, only references to a “shotgun” or “firearm” would be permitted, but not references to a “sawed-off shotgun.” The defendant’s recollection is consistent with the pertinent part of my Evidentiary Ruling. *See* Evidentiary Ruling at 22-23. I am satisfied that the prosecution has now made sufficient showing, in its Response To The Court’s [Evidentiary Ruling] (docket no. 62), that possession of the sawed-off shotgun is relevant to whether the defendant possessed shotgun ammunition and, further, that evidence that the sawed-off shotgun was stored in a sock is relevant to show “identity,” where there is evidence that ammunition (including shotgun shells) at issue in Count 2 was also stored in a sock. I am also satisfied that, if properly limited, such evidence will not be unfairly prejudicial. The prosecution has persuaded me, and the defendant appears to agree, that evidence that the defendant possessed a “shotgun” is relevant and not unfairly prejudicial, but the prosecution has *not* persuaded me that any reference to that shotgun as “sawed-off” is more probative than prejudicial, for the reasons stated in my Evidentiary Ruling at 22-23. Thus, the prosecution may present evidence that the defendant possessed a “shotgun” on various occasions in 2014, and even that it was loaded or fired (but not that it was allegedly fired *at* anyone or used to shoot J.B.), and that the “shotgun” was stored in a sock, but will not be allowed to refer to that “shotgun” as “sawed-off.” In light of the admissibility of evidence that the shotgun was stored in a sock, I have now modified this instruction to include

- Evidence of possession of other firearms cannot be used to show that the defendant has a propensity, inclination, or tendency to commit crimes<sup>38</sup>

Remember,

- As with all other evidence, the weight to give such evidence is for you to decide
- You cannot convict a person simply because he may have committed similar acts in the past
- The defendant is on trial only for the crimes charged in this case
- You may consider the evidence of other similar acts only for the purpose identified above

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**an explanation concerning use of such evidence to show “identity.” See 8th Cir. Criminal Model 2.09.**

<sup>38</sup> 8th Cir. Crim. Model 2.08, n.3 (2011) (the defendant may request that the jury be instructed that such evidence is not admissible to prove propensity to commit a crime). *The defendant should advise me whether or not he wants this instruction prohibiting use of the other firearms evidence simply to show “propensity.”* The defendant expressly requested that this admonition concerning “propensity” be included.

## No. 24 — TESTIMONY OF WITNESSES<sup>39</sup>

You may believe all of what any witness says, only part of it, or none of it. In evaluating a witness's testimony, consider the witness's

- Opportunity to have seen and heard what happened
- Memory. Memory is not an exact recording of past events and witnesses may misremember events and conversations. Scientific research has established
  - that human memory is not at all like video recordings that a witness can simply replay to remember precisely what happened
  - that when a witness has been exposed to statements, conversations, questions, writings, documents, photographs, media reports, and opinions of others, the accuracy of their memory may be affected and distorted
  - that a witness's memory, even if testified to in good faith, and with a high degree of confidence, may be inaccurate, unreliable, and falsely remembered; thus, human memory can be distorted, contaminated, changed, and events and conversations can even be falsely imagined

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<sup>39</sup> My new "stock" jury instruction on "testimony," which tries to take into account the teachings of social science regarding memory and eyewitness testimony. See 8th Cir. Criminal Models 1.05 and 3.04; *and compare* Joint Proposed Jury Instruction Nos. 7-8. I do not give, and for many years have not given, separate "credibility" and "impeachment" instructions.

- that distortion, contamination, and falsely imagined memories may happen at each of the three stages of memory: acquisition (perception of events); storage (period of time between acquisition and retrieval); and retrieval (recalling stored information).
- Demeanor. Scientific research has established
  - that there is not necessarily a relationship between how confident witnesses are about their testimony and the accuracy of their testimony; thus, less confident witnesses may be more accurate than confident witnesses
  - that common cultural cues, like shifty eyes, shifty body language, the failure to look one in the eye, grimaces, stammering speech, and other mannerisms, are not necessarily correlated to witness deception or false or inaccurate testimony
- Motives for testifying
  - Interest in the outcome of the case
  - Drug or alcohol use or addiction, if any
  - The reasonableness of the witness's testimony

In evaluating a witness's testimony, also consider the following:

- Any differences between what the witness says now and said earlier
- Any inconsistencies between the witness's testimony and any other evidence that you believe

- Whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or, are instead, the result of lies or phony memory lapses, and
- Any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is

- a public official or law enforcement officer
- an expert<sup>40</sup>

You may give any witness's opinion<sup>41</sup> whatever weight you think it deserves, but you should consider

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

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<sup>40</sup> I note that Joint Proposed Jury Instruction No. 11 concerns "experts." Therefore, I have included my stock instructions concerning "experts." **The defendant stated that he will not testify, so I have removed the explanation of how to treat the testimony of the defendant, if he testifies.**

<sup>41</sup> The factors relevant to determination of the weight to give a witness's opinions are essentially the same, whether the witness is a "lay" witness or an "expert" witness. *See* 8th Cir. Criminal Model 4.10 (opinions of experts); 8th Cir. Criminal Model 3.04 (credibility of witnesses); FED. R. EVID. 701 (basis for lay opinions); FED. R. EVID. 702 (basis for expert opinions). I do not give separate "credibility" instructions for expert witnesses.

You must consider with greater caution and care the testimony, if any, of a witness testifying after a promise from the prosecution not to use that witness's testimony, to a grand jury or at this trial, against that witness in a criminal case. It is for you to decide

- what weight you think the testimony of such a witness deserves
- whether or not such a witness's testimony has been influenced by the prosecution's promise <sup>42</sup>

Remember, it is your exclusive right to give any witness's testimony whatever weight you think it deserves.

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<sup>42</sup> Compare 8th Cir. Criminal Model 4.04; Joint Proposed Jury Instruction No. 9. Joint Proposed Jury Instruction is in terms of witnesses testifying pursuant to "promises" that their testimony will not be used against them. Because I am giving this instruction *before* any evidence is presented, I do not find it appropriate to identify the witnesses in question by name.

## No. 25 — OBJECTIONS<sup>43</sup>

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

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<sup>43</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.03 (2014) (numbered ¶ 2); Joint Proposed Jury Instruction No. 4.

## No. 26 — BENCH CONFERENCES<sup>44</sup>

During the trial it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

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<sup>44</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.07 (2014).

## No. 27 — NOTE-TAKING<sup>45</sup>

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

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<sup>45</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.06A (2014); Joint Proposed Jury Instruction No. 23.

## No. 28 — CONDUCT OF JURORS DURING TRIAL<sup>46</sup>

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

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<sup>46</sup> My “stock” jury instructions. See 8th Cir. Criminal Model 1.08.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on “implicit biases.” As we discussed during jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes—that is, “implicit biases”—that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.<sup>47</sup>
- A Verdict Form is attached to these Instructions.<sup>48</sup> A Verdict Form is simply a written notice of your decision. After your deliberations,

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<sup>47</sup> My “stock” instruction on “implicit bias.”

<sup>48</sup> *Compare* Joint Proposed Jury Instruction No. 25.

if you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question. You will all sign that copy to indicate that you agree with the verdict and that it is unanimous. Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict.

- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

## No. 29 — DUTY TO DELIBERATE<sup>49</sup>

A verdict must represent the careful and impartial judgment of each of you. However, before you make that judgment, you must consult with one another and try to reach agreement, if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has *not* proved beyond a reasonable doubt that the defendant is guilty of a particular charge, say so
- If you are convinced that the prosecution *has* proved beyond a reasonable doubt that the defendant is guilty of a particular charge, say so
- Don't give up your honest beliefs just because others think differently or because you simply want to be finished with the case
- On the other hand, do not hesitate to re-examine your own views and to change your opinions, if you are convinced that they are wrong
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence

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<sup>49</sup> My “stock” jury instructions. See 8th Cir. Criminal Model 3.12 (2014); Joint Proposed Jury Instruction No. 24.

- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these instructions
- You must consider all of the evidence bearing on each question before you
- Take all the time that you feel is necessary
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case

### No. 30 — DUTY DURING DELIBERATIONS<sup>50</sup>

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of one or more of the charges, I will decide what his sentence should be.
- Communicate with me by sending me a note through a CSO. The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant’s race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard

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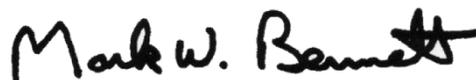
<sup>50</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 3.12; Joint Proposed Jury Instruction Nos. 24 and 25.

to his race, color, religious beliefs, national origin, or sex. To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your verdict.

- Complete the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 20th day of April, 2015.



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MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW ROBBINS,

Defendant.

No. CR 14-129-MWB

**COURT’S PROPOSED  
VERDICT FORM  
(04/14/15 VERSION)**

As to defendant Matthew Robbins, we, the Jury, find as follows:

<b>COUNT 1: POSSESSION OF A STOLEN FIREARM</b>		<b>VERDICT</b>
<b>Verdict</b>	On the “possession of a stolen firearm” offense, as charged in <b>Count 1</b> and explained in Instruction No. 5, please mark your verdict. <i>(Please go on to consider your verdict on Count 2.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty
<b>COUNT 2: FELON AND DRUG USER IN POSSESSION OF A FIREARM OR AMMUNITION</b>		<b>VERDICT</b>
<b>Step 1: Verdict</b>	On the “felon and drug user in possession of a firearm or ammunition” offense, as charged in <b>Count 2</b> and explained in Instruction No. 6, please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the question in Step 2. Instead, please read the “Certification,” below, sign the Verdict Form, and notify the CSO that you have reached a verdict. On the other hand, if you find the defendant “guilty” of this offense, please go on to Step 2.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty

<b>Step 2: Prohibited Status(es)</b>	<i>If you found the defendant “guilty” of the offense charged in <b>Count 2</b> in <b>Step 1</b>, please indicate whether you find him guilty of prohibited possession based on his prior felony conviction, his illegal drug use (and whether he used methamphetamine, marijuana, or both), or both his prior felony conviction and his use of illegal drugs. (After answering this question, please go on to consider the question <b>Step 3</b>.)</i>
	<input type="checkbox"/> prior conviction of a felony offense <input type="checkbox"/> illegal drug use (involving use of <input type="checkbox"/> methamphetamine, <input type="checkbox"/> marijuana, or <input type="checkbox"/> both methamphetamine and marijuana) <input type="checkbox"/> both a prior conviction and illegal drug use (involving use of <input type="checkbox"/> methamphetamine, <input type="checkbox"/> marijuana, or <input type="checkbox"/> both methamphetamine and marijuana)
<b>Step 3: Item(s) Possessed</b>	<i>If you found the defendant “guilty” of this offense in <b>Step 1</b>, please indicate which one or more of the following items the defendant possessed after a felony conviction or while an illegal drug user. (After answering this question, please read the “Certification,” below, sign the Verdict Form, and notify the CSO that you have reached a verdict.)</i>
	<input type="checkbox"/> a Kimber .45 caliber handgun, bearing serial number K389332
	<input type="checkbox"/> sixteen rounds of Hornady .45 caliber hollow point bullets
	<input type="checkbox"/> six Winchester 12-gauge slug shotgun shells
	<input type="checkbox"/> one Federal 12-gauge birdshot shotgun shells
<b>CERTIFICATION</b>	
<p>By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would returned the same verdict for or against the defendant on the charged offenses regardless of the race, color, religious beliefs, national origin, or sex of the defendant.</p>	

\_\_\_\_\_ Date

\_\_\_\_\_ Foreperson

\_\_\_\_\_ Juror

Juror	Juror

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW ROBBINS,

Defendant.

No. CR 14-129-MWB

**SUPPLEMENTAL INSTRUCTION  
TO THE JURY**

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**SUPPLEMENTAL INSTRUCTION**

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**VERDICT FORM**

## **No. 31 — INTRODUCTION**

Now that the evidence is finished, I will give you a supplemental instruction. The supplemental instruction should be taken together with all of the other instructions that I previously gave to you. You must consider as a whole the instructions that I gave you at the beginning of the trial and the supplemental instruction that I am giving you now.

**No. 32 — EVIDENCE OF LEAVING THE  
JURISDICTION**

You have heard evidence that defendant Matthew Robbins left Iowa, after the June 3, 2014, search of the residence where he was present. You may, but are not required to, consider such evidence as evidence of guilt of the offenses charged in **Counts 1 and 2**, if the prosecution proves beyond a reasonable doubt all of the following:

***One*, shortly after law enforcement officers searched the residence where the defendant was present on June 3, 2014, the defendant left Iowa.**

***Two*, the defendant left Iowa when he knew or thought he was going to be charged for committing an offense described in these instructions.**

***Three*, a reason for the defendant leaving Iowa was his consciousness of guilt of a charged offense.**

Leaving Iowa may not be a reliable indication of guilt. There may be reasons consistent with innocence for the defendant to leave Iowa. For this element to be proved, you must unanimously agree that a reason for the defendant leaving Iowa was because of his consciousness of guilt of a charged offense.

You must consider any evidence that the defendant left Iowa along with all of the other evidence in the case to determine whether the evidence of leaving Iowa shows guilt of a charged offense.

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW ROBBINS,

Defendant.

No. CR 14-129-MWB

**COURT’S PROPOSED  
SUPPLEMENTAL  
INSTRUCTIONS  
TO THE JURY**

(04/14/15 REVISED  
“ANNOTATED” VERSION)

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**VERDICT FORM**

**No. 33 — INTRODUCTION<sup>51</sup>**

Now that the prosecution has concluded its case, I must give you some supplemental instructions. These supplemental instructions should be taken together with all of the other instructions that I previously gave to you. You must consider as a whole the instructions that I gave you at the beginning of the trial and the supplemental instructions that I am giving you now.<sup>52</sup>

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<sup>51</sup> *Compare* 8th Cir. Criminal Model 10.01 (2014) (response to juror question necessitating supplemental instructions).

<sup>52</sup> *Id.*

**No. 34 — EVIDENCE OF FLIGHT<sup>53</sup>**

You have heard evidence that defendant Matthew Robbins allegedly fled to Texas, then to Florida, after the June 3, 2014, search of the residence where he was staying. You may, but are not required to, consider such evidence as evidence of guilt of the offenses charged in **Counts 1 and 2**, if the prosecution proves beyond a reasonable doubt all of the following:

***One*, shortly after law enforcement officers searched the residence where the defendant was staying on June 3, 2014, the defendant fled the state of Iowa.**

***Two*, the defendant’s flight occurred when he knew or thought that he was being sought for committing a charged offense.<sup>54</sup>**

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<sup>53</sup> Compare Joint Proposed Jury Instruction No. 21. The Eighth Circuit Court of Appeals has recognized that flight is evidence suggesting a consciousness of guilt and, thus, guilt itself. See, e.g., *United States v. Thompson*, 690 F.3d 977, 991 (8th Cir. 2012); see also 8th Cir. Criminal Model 4.13 (regarding “specific inferences”), Committee Comments (discussing the circumstances in which an instruction of “consciousness of guilt” from “flight,” “along the lines of Instruction 4.09,” may be appropriate).

<sup>54</sup> This element concerns circumstances from which it is reasonable to infer that the defendant’s flight was *because of* his consciousness of guilt. The Eighth Circuit Court of Appeals has indicated that flight gives rise to an inference of guilty if the fact of flight arises “‘immediately after the commission of a crime, *or* after he is accused of a crime that has been committed.’” *United States v. White*, 488 F.2d 660, 662 (8th Cir. 1973) (emphasis in the original) (quoting with specific approval the italicized language from the instruction given by the district court). The court has also explained, however, that the inference may arise from a defendant’s knowledge or belief that he might be sought for the crime. See *United States v. El-Alamin*, 574 F.3d 915, 927 (8th Cir. 2009) (noting, *inter alia*, that the defendant suddenly began to run when he saw a search team); *United*

**Three, a reason for the defendant’s flight was his consciousness of guilt of a charged offense.<sup>55</sup>**

Flight may not be a reliable indication of guilt.<sup>56</sup> There may be reasons consistent with innocence of a charged offense for a person who has not committed a crime to flee.<sup>57</sup> For this element to be proved, you must unanimously agree that a reason for the defendant’s alleged flight was because of his consciousness of guilt of a charged offense.

You must consider any evidence that the defendant fled along with all of the other evidence in the case to determine whether the evidence of flight shows guilt of a charged offense. It is entirely for you to decide

- whether evidence of flight reasonably suggests guilt

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*States v. Thompson*, 690 F.3d 977, 991 (8th Cir. 2012) (approving the district court’s determination that the circumstances demonstrating the defendants’ knowledge or belief that he might be sought for a crime gave rise to an inference of guilt from his flight). I have cast this element in terms of knowledge or belief that the defendant was being sought for a charged crimes as the circumstance relevant here. See 1A Fed. Jury Prac. & Instr. § 14:08 (6th ed.); *White*, 488 F.2d at 662; *Thompson*, 690 F.3d at 991. **The prosecution requests that I add “in whole or in part” after “occurred” in this element. I have not made this change, because it would not relate to the reasons for the flight.**

<sup>55</sup> See *Thompson*, 690 F.3d at 991 (considering the defendant’s argument that he “fled to China not because of the potential drug charge, but rather because of concern ‘only with the penalty he would face if convicted of being a felon in possession’”). **I have made the prosecution’s requested change of “the reason” to “a reason” in this element. Similarly, I have inserted “a reason for” before “the defendant’s alleged flight” in the last sentence of the explanation to this element.**

<sup>56</sup> *White*, 488 F.2d at 662; 1A Fed. Jury Prac. & Instr. § 14:08 (6th ed.) (stating circumstances in which the conduct in question may or may not indicate guilt).

<sup>57</sup> See *United States v. Webster*, 442 F.3d 1065, 1067 (8th Cir. 2006) (instruction approved by the appellate court).

- the significance of any evidence of flight<sup>58</sup>

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<sup>58</sup> *Webster*, 442 F.3d at 667; *cf.* 8th Cir. Criminal Models 4.09 and 4.13.

**No. 35 — EVIDENCE OF AN ATTEMPT TO  
INFLUENCE A WITNESS<sup>59</sup>**

You have also heard evidence that defendant Matthew Robbins allegedly attempted to influence one or more witnesses in connection with their testimony about crimes charged in this case.<sup>60</sup> You may, but are not required to, consider such evidence as evidence of guilt of the offenses charged in **Counts 1 and 2**, if the prosecution proves beyond a reasonable doubt all of the following:

***One*, prior to trial on the crimes charged against the defendant, the defendant attempted to influence the testimony of one or more witnesses.**

***Two*, the defendant’s attempt to influence a witness occurred when he knew or thought that the witness would testify against him at trial.**<sup>61</sup>

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<sup>59</sup> Compare 8th Cir. Criminal Model 4.09; Joint Proposed Jury Instruction No. 10.

<sup>60</sup> See *United States v. Reaves*, 649 F.3d 862, 867-68 (8th Cir. 2011) (discussing circumstances in which it was appropriate for the district court to give 8th Cir. Criminal Model 4.09 concerning inferences to be drawn from an attempt to influence a witness, citing *United States v. Grajales-Montoya*, 117 F.3d 356, 361 (8th Cir. 1997)); *United States v. Garrison*, 168 F.3d 1089, 1093 (8th Cir. 1999) (same). These cases suggest the same chain of inferences from “flight” to “consciousness of guilt” must be sustainable from an “attempt to influence a witness” to “consciousness of guilt.” 8th Cir. Criminal Models 4.09 and 4.13 are expressly cast in terms of a permissive inference (“may be considered” and “you may consider,” “you may, but are not required to find or infer”).

<sup>61</sup> This element concerns circumstances from which it is reasonable to infer that the defendant’s attempt to influence a witness was *because of* his consciousness of guilt. As with the propriety of an inference from “flight” to “consciousness of guilt,” the Eighth Circuit Court of Appeals has considered the timing of the attempt to influence the witness before trial and the defendant’s belief that the witness would testify at trial as going to the propriety of the inference. See *Reaves*, 649 F.3d at 868.

***Three, the reason for the defendant’s attempt to influence a witness was his consciousness of guilt of a charged offense.***<sup>62</sup>

You must consider any evidence that the defendant allegedly attempted to influence a witness along with all of the other evidence in the case to determine whether the evidence of an attempt to influence a witness shows guilt of a charged offense. It is entirely for you to decide

- whether evidence of an attempt to influence a witness reasonably suggests guilt
- the significance of any evidence of an attempt to influence a witness<sup>63</sup>

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<sup>62</sup> *See Reaves*, 649 F.3d at 868 (holding that evidence of an attempt to influence a witness, by threatening to “dig up anything and everything” about her because she was testifying against him, was sufficient to submit the instruction on an inference of consciousness of guilt).

<sup>63</sup> *See* 8th Cir. Criminal Model 4.09.