

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CEDRIC MCDONALD,

Defendant.

No. CR 14-3056-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 Cedric McDonald with two offenses arising from his alleged illegal possession of firearms. 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 Cedric McDonald, 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 date 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 the date alleged for that offense in the Indictment.

Location

You must decide whether the defendant’s conduct occurred in the Northern District of Iowa. Fort Dodge and Webster 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.

Verdict Form

A Verdict Form is attached to these Instructions.

- A Verdict Form is simply a written notice of your decision
- When 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

* * *

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

No. 5 — FIREARMS

The Indictment alleges that the defendant possessed various firearms and rifles and that some of them were stolen. The firearms are alleged to be the following:

FIREARMS ALLEGEDLY POSSESSED		
Description	Serial/Patent No.	Allegedly Stolen
P. Beretta-Gardone VT, 12 gauge shotgun, S56E	Ser. No. 55124	Yes
Savage Arms Westfield, Mass. model Savage 24 Series S, .410 shotgun with a .22 barrel on top	Ser. No. E295927	Yes
Remington Fieldmaster model 572, .22 caliber rifle	None	Yes
Harrington & Richardson, Topper model 158, .410 shotgun	US Pat. No. 2876576 (no ser. no.)	Yes
Winchester model 74, .22 caliber semi-automatic rifle	Ser. No. 235859A	Yes
Stoeger model Condor I, 20 gauge shotgun	Ser. No. 127949-05	Yes
Remington 870 Express Magnum, 12 gauge pump shotgun	Ser. No. 8089140M	No
Remington Wingmaster 870, 12 gauge pump shotgun	Ser. No. S430182V	No
Remington model 700, .17 caliber bolt action rifle	Ser. No. C6519856	No
Savage Mark II bolt action, .22 caliber rifle	Ser. No. 2003476	No

**No. 6 — COUNT 1: FELON IN POSSESSION OF A
FIREARM**

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

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

***One*, sometime before May 20, 2014, the defendant had been convicted of one or more felony offenses.**

The prosecution and the defendant have stipulated—that is, they have agreed—that, at some time prior to May 20, 2014, the defendant had been convicted of one or more felony offenses. Therefore, you must consider this element to be proved.

***Two*, on or about May 20, 2014, the defendant knowingly possessed one or more of the firearms identified in the Indictment.**

“Possession” was defined for you in Instruction No. 4, and the firearms at issue in this count are all ten of the firearms identified in Instruction No. 5. You must determine whether the defendant knowingly possessed one or more of those firearms.

- the prosecution does not have to prove that the defendant knowingly possessed all of those firearms
- it is illegal for a felon to possess even a single firearm

- you must unanimously agree on which one or more of the firearms alleged, if any, the defendant possessed

The prosecution does not have to prove

- that the defendant knew that it was illegal for him to possess a firearm
- who “owned” the firearm

***Three*, the firearm or firearms that the defendant illegally possessed had been transported across a state line at some time before the defendant possessed them.**

The parties have stipulated—that is, they have agreed—that, at some time prior to May 20, 2014, the firearms at issue were transported across state lines, if the defendant did, indeed, possess one or more of those firearms. 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 that defendant not guilty of the “felon in possession of a firearm” offense.

**No. 7 — COUNT 2: POSSESSION OF A STOLEN
FIREARM**

Count 2 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*, on or about May 20, 2014, the defendant knowingly possessed one or more of the allegedly stolen firearms identified in the Indictment.**

“Possession” was defined for you in Instruction No. 4, and the firearms at issue are the first six firearms identified in Instruction No. 5. You must determine whether the defendant knowingly possessed one or more of those six firearms.

- the prosecution does not have to prove that the defendant knowingly possessed all six of those firearms
- it is illegal for a person to possess even a single stolen firearm
- you must unanimously agree on which one or more of the six firearms alleged, if any, the defendant possessed

***Two*, at the time that the defendant possessed the firearm or firearms, the firearm or firearms 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 or firearms, he knew or had reasonable cause to believe that the firearm or firearms were stolen.

The prosecution must prove

- that the defendant actually knew that the firearm or firearms were stolen, or
- that the defendant had reasonable cause to believe that the firearm or firearms were 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 or firearms were stolen
 - The prosecution must prove that it would have been reasonable for the defendant, in particular, to believe that the firearm or firearms were stolen
 - Thus, if the defendant genuinely, but mistakenly, believed that the firearm or firearms were not stolen, then this alternative is not proved, even if a

reasonable person would have found
his belief to be unreasonable

Three, the stolen firearm or firearms that the defendant possessed had been transported across a state line at some time before the defendant possessed them.

The parties have stipulated—that is, they have agreed—that, at some time prior to May 20, 2014, the firearms at issue were transported across state lines, if the defendant did, indeed, possess one or more of those firearms. 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 that defendant not guilty of the “possession of a stolen firearm” offense.

No. 8 — 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. 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 following:

- The witness's:
 - Opportunity to have seen and heard what happened
 - Memory. 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. Memory is not an exact recording of past events and witnesses may misremember events and conversations. Scientific research has also established 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. Scientific research has also established that a witness's memory, even if testified to in good faith, and with a high degree of confidence in their testimony, may be inaccurate, unreliable, and falsely remembered. Thus, human memory can be distorted, contaminated, changed, and events and conversations even falsely imagined. Scientific research has further established that distortion, contamination, and falsely imagined memories may happen at each of the three stages of memory: acquisition (perception of event); storage (period of time

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

- Demeanor. Scientific research has established there is not necessarily a relationship between how confident witnesses are about their testimony and the accuracy of the testimony. Thus, less confident witnesses may be more accurate than confident witnesses. Scientific research has also established 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
- 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

If the defendant testifies,

- you should judge his testimony in the same way that you judge the testimony of any other witness

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.

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

- 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 about participation in a charged crime. 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 that witness's desire to please the prosecutor or to strike a good bargain is for you to decide

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.
- 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:

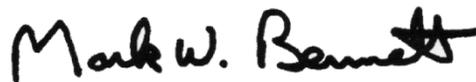
- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of one or more of the charges, I will decide what his sentence should be.
- Communicate 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 16th day of March, 2015.



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

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CEDRIC MCDONALD,

Defendant.

No. CR 14-3056-MWB

VERDICT FORM

As to defendant Cedric McDonald, we, the Jury, find as follows:

	COUNT 1: FELON IN POSSESSION OF A FIREARM	VERDICT
Step 1: Verdict	On the “felon in possession of a firearm” offense, as charged in Count 1 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, go on to consider your verdict on Count 2. 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
Step 2: Firearms Possessed	If you found the defendant “guilty” of the offense charged in Count 1 , please indicate which one or more of the following firearms you unanimously agree that the defendant illegally possessed.	
	___ P. Beretta-Gardone VT, 12 gauge shotgun, S56E, Ser. No. 55124	
	___ Savage Arms Westfield, Mass. model Savage 24 Series S, .410 shotgun with a .22 barrel on top, Ser. No. E295927	
	___ Remington Fieldmaster model 572, .22 caliber rifle, no ser. no.	
	___ Harrington & Richardson, Topper model 158, .410 shotgun, US Pat. No. 2876576 (no ser. no.)	
	___ Winchester model 74, .22 caliber semi-automatic rifle, Ser. No. 235859A	
	___ Stoeger model Condor I, 20 gauge shotgun, Ser. No. 127949-05	

	<input type="checkbox"/> Remington 870 Express Magnum, 12 gauge pump shotgun, Ser. No. 8089140M
	<input type="checkbox"/> Remington Wingmaster 870, 12 gauge pump shotgun, Ser. No. S430182V
	<input type="checkbox"/> Remington model 700, .17 caliber bolt-action rifle, Ser. No. C6519856
	<input type="checkbox"/> Savage Mark II bolt action, .22 caliber rifle, Ser. No. 2003476
COUNT 2: POSSESSION OF A STOLEN FIREARM	
VERDICT	
Step 1: Verdict	<p>On the “possession of a stolen firearm” offense, as charged in Count 2 and explained in Instruction No. 7, 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></p>
Step 2: Stolen Firearms Possessed	<p><i>If you found the defendant “guilty” of the offense charged in Count 2, please indicate which one or more of the following firearms you unanimously agree were stolen and were possessed by the defendant. (After completing this Step, please read the “Certification,” below, sign the Verdict Form, and notify the CSO that you have reached a verdict.)</i></p>
	<input type="checkbox"/> P. Beretta-Gardone VT, 12 gauge shotgun, S56E, Ser. No. 55124
	<input type="checkbox"/> Savage Arms Westfield, Mass. model Savage 24 Series S, .410 shotgun with a .22 barrel on top, Ser. No. E295927
	<input type="checkbox"/> Remington Fieldmaster model 572, .22 caliber rifle, no ser. no.
	<input type="checkbox"/> Harrington & Richardson, Topper model 158, .410 shotgun, US Pat. No. 2876576 (no ser. no.)
	<input type="checkbox"/> Winchester model 74, .22 caliber semi-automatic rifle, Ser. No. 235859A
	<input type="checkbox"/> Stoeger model Condor I, 20 gauge shotgun, Ser. No. 127949-05

CERTIFICATION

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 have 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.

Date

Foreperson

Juror

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CEDRIC MCDONALD,

Defendant.

No. CR 14-3056-MWB

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

(03/12/15 REVISED
“ANNOTATED” VERSION)

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VERDICT FORM

No. 16 — INTRODUCTION¹

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 Cedric McDonald with two offenses arising from his alleged illegal possession of firearms.² 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.

¹ Compare 8th Cir. Criminal Model 1.01; Joint Proposed Jury Instruction Nos. 1-4, 13.

² 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.

Remember, only defendant Cedric McDonald, 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.³

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.

³ 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 PROOF⁴**

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

⁴ Compare 8th Cir. Criminal Model 3.05; Prosecution's Proposed Jury Instruction No. 2.

- 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 DOUBT⁵

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.

⁵ Compare 8th Cir. Criminal Model 3.11; Prosecution's Proposed Jury Instruction No. 3.

No. 19 — OTHER IMPORTANT TERMS⁶

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.⁷

⁶ I recognize that 8th Cir. Criminal Model 7.05 provides an instruction on “proof of intent or knowledge.” *Compare* Prosecution’s Proposed Jury Instruction No. 4. 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))).

⁷ Judges and attorneys take for granted that an offense has “elements,” but this concept may not be so obvious to lay jurors.

*Timing*⁸

The Indictment alleges an approximate date 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 the date alleged for that offense in the Indictment.

Location

You must decide whether the defendant's conduct occurred in the Northern District of Iowa. Fort Dodge and Webster County are in the Northern District of Iowa.

*Possession*⁹

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,¹⁰ and the intention to control it, or

⁸ Compare Prosecution's Proposed Jury Instruction No. 4.

⁹ 9th Cir. Criminal Model 3.18 (modified and recast in past tense); compare Prosecution's Proposed Jury Instruction No. 4.

¹⁰ See Prosecution's Proposed Jury Instruction No. 4 (requesting the addition of "ability" after "power," which I had given as an explanation of "power" in answer to a

- control over a place in which it was concealed¹¹

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

jury question in *United States v. Zoch*, No. CR 11-4031-MWB (docket no. 55-1) (N.D. Iowa Nov. 16, 2011)).

¹¹ 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, failure to state “intent to control” the firearm or the place where it is found as an express requirement of constructive possession is not necessary.

Verdict Form¹²

A Verdict Form is attached to these Instructions.

- A Verdict Form is simply a written notice of your decision
- When 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

* * *

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

¹² Compare Prosecution’s Proposed Jury Instruction No. 4.

No. 20 — FIREARMS¹³

The Indictment alleges that the defendant possessed various firearms and rifles and that some of them were stolen. The firearms are alleged to be the following:

FIREARMS ALLEGEDLY POSSESSED		
Description	Serial/Patent No.	Allegedly Stolen
P. Beretta-Gardone VT, 12 gauge shotgun, S56E	Ser. No. 55124	Yes
Savage Arms Westfield, Mass. model Savage 24 Series S, .410 shotgun with a .22 barrel on top	Ser. No. E295927	Yes
Remington Fieldmaster model 572, .22 caliber rifle	None	Yes
Harrington & Richardson, Topper model 158, .410 shotgun	US Pat. No. 2876576 (no ser. no.)	Yes
Winchester model 74, .22 caliber semi-automatic rifle	Ser. No. 235859A	Yes
Stoeger model Condor I, 20 gauge shotgun	Ser. No. 127949-05	Yes
Remington 870 Express Magnum, 12 gauge pump shotgun	Ser. No. 8089140M	No
Remington Wingmaster 870, 12 gauge pump shotgun	Ser. No. S430182V	No
Remington model 700, .17 caliber bolt action rifle	Ser. No. C6519856	No
Savage Mark II bolt action, .22 caliber rifle	Ser. No. 2003476	No

¹³ Because many of the same firearms are at issue in both counts, I find it more efficient to list them once, indicating whether each was allegedly stolen.

**No. 21 — COUNT 1: FELON IN POSSESSION OF A
FIREARM¹⁴**

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

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

One, sometime before May 20, 2014, the defendant had been convicted of one or more felony offenses.

The prosecution and the defendant have stipulated—that is, they have agreed—that, at some time prior to May 20, 2014, the defendant had been convicted of one or more felony offenses. Therefore, you must consider this element to be proved.¹⁵

Two, on or about May 20, 2014, the defendant knowingly possessed one or more of the firearms identified in the Indictment.¹⁶

¹⁴ See 8th Cir. Criminal Model No. 6.18.922A; Prosecution’s Proposed Jury Instruction No. 5.

¹⁵ Because the parties appear to have stipulated that the defendant has one or more offenses qualifying as “felonies” under 18 U.S.C. § 922(a), I believe it is appropriate simply to refer to “felony offenses,” rather than to crimes or offenses “punishable by imprisonment for more than one year under the law of the State in which the crime was committed,” as stated in the model and the Prosecution’s Proposed Jury Instruction No. 5. ***The parties must provide me with timely notice, if they do not reach a stipulation on the defendant’s prior convictions or the defendant withdraws that stipulation. No change was required, because the parties have entered into the stipulation.***

¹⁶ The possession of the firearm must be on or about the date alleged in the indictment.

“Possession” was defined for you in Instruction No. 4, and the firearms at issue in this count are all ten of the firearms identified in Instruction No. 5. You must determine whether the defendant knowingly possessed one or more of those firearms.

- the prosecution does not have to prove that the defendant knowingly possessed all of those firearms
- it is illegal for a felon to possess even a single firearm
- you must unanimously agree on which one or more of the firearms alleged, if any, the defendant possessed

The prosecution does not have to prove

- that the defendant knew that it was illegal for him to possess a firearm
- who “owned” the firearm¹⁷

Three, the firearm or firearms that the defendant illegally possessed had been transported across a state line at some time before the defendant possessed them.

The parties have stipulated—that is, they have agreed—that, at some time prior to May 20, 2014, the firearms at issue were transported across state lines, if the defendant did, indeed, possess one or more of those

¹⁷ “[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)).

firearms. Therefore, you must consider this element to be proved.¹⁸

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

¹⁸ It appears that the parties have stipulated that the firearms were transported across state lines. *I have included that stipulation here, assuming that the parties have or will reach such a stipulation. The parties must promptly notify me, if they do not reach such a stipulation or the defendant withdraws from it.* No change was required, because the parties have entered into the stipulation.

**No. 22 — COUNT 2: POSSESSION OF A STOLEN
FIREARM¹⁹**

Count 2 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, on or about May 20, 2014, the defendant knowingly possessed one or more of the allegedly stolen firearms identified in the Indictment.²⁰

“Possession” was defined for you in Instruction No. 4, and the firearms at issue are the first six firearms

¹⁹ The prosecution has proffered an instruction addressing only the “possessing” alternative of the offense, even though the Indictment also charged “receiv[ing], conceal[ing], stor[ing], and sell[ing]” alternatives, and the statute includes even more alternatives. *See* 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 . . .”). I will only instruct on the alternative for which the prosecution has proffered an instruction.

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 also believe that it is appropriate to separate the *fact* that the firearms were “stolen” from the scienter requirement that the defendant knew or had reasonable cause to believe that they were stolen.

²⁰ The possession of the firearm must be on or about the date alleged in the indictment.

identified in Instruction No. 5. You must determine whether the defendant knowingly possessed one or more of those six firearms.

- the prosecution does not have to prove that the defendant knowingly possessed all six of those firearms
- it is illegal for a person to possess even a single stolen firearm
- you must unanimously agree on which one or more of the six firearms alleged, if any, the defendant possessed

Two, at the time that the defendant possessed the firearm or firearms, the firearm or firearms 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 firearm²¹

²¹ 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 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,

The prosecution does not have to prove that the defendant is the person who stole the firearm in question.²²

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

The prosecution must prove

- that the defendant actually knew that the firearm or firearms were stolen, or
- that the defendant had reasonable cause to believe that the firearm or firearms were stolen²³
 - It is not enough for the prosecution to prove that a reasonable person, in the defendant's circumstances, would have believed that the firearm or firearms were stolen

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.

²² 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).

²³ The explanation of this alternative, in the next three sub-bullets, is drawn from *Iron Eyes*, 367 F.3d at 784-85.

- The prosecution must prove that it would have been reasonable for the defendant, in particular, to believe that the firearm or firearms were stolen
- Thus, if the defendant genuinely, but mistakenly, believed that the firearm or firearms were not stolen, then this alternative is not proved, even if a reasonable person would have found his belief to be unreasonable²⁴

Three, the stolen firearm or firearms that the defendant possessed had been transported across a state line at some time before the defendant possessed them.

The parties have stipulated—that is, they have agreed—that, at some time prior to May 20, 2014, the firearms at issue were transported across state lines, if the defendant did, indeed, possess one or more of those

²⁴ In *Iron Eyes*, the Eighth Circuit Court of Appeals explained that the statute does not require proof that the defendant possessed a firearm that a so-called reasonable person would have believed was stolen in the circumstances of the case, but 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 firearms were not stolen. Neither party commented on the third sub-bullet, so I have left it in the instruction.***

firearms. Therefore, you must consider this element to be proved.²⁵

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

²⁵ Again, it appears that the parties have stipulated that the firearms were transported across state lines. *I have included that stipulation here, assuming that the parties have or will reach such a stipulation. The parties must promptly notify me, if they do not reach such a stipulation or the defendant withdraws from it. No change was required, because the parties have entered into the stipulation.*

No. 23 — DEFINITION OF EVIDENCE²⁶

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

²⁶ My “plain language” jury instructions. *See* 8th Cir. Criminal Model 1.03; Prosecution’s Proposed Jury Instruction No. 7.

- “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.²⁷

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

²⁷ 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* Prosecution’s Proposed Jury Instruction No. 7 (including my stock instruction defining both kinds of evidence).

No. 24 — TESTIMONY OF WITNESSES²⁸

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 following:

- The witness's:
 - Opportunity to have seen and heard what happened
 - Memory. 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. Memory is not an exact recording of past events and witnesses may misremember events and conversations. Scientific research has also established 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. Scientific research has also established that a witness's memory, even if testified to in good faith, and with a high degree of confidence in their testimony, may be inaccurate, unreliable, and falsely remembered. Thus, human memory can be

²⁸ 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.

distorted, contaminated, changed, and events and conversations even falsely imagined. Scientific research has further established that distortion, contamination, and falsely imagined memories may happen at each of the three stages of memory: acquisition (perception of event); storage (period of time between acquisition and retrieval); and retrieval (recalling stored information).

- Demeanor. Scientific research has established there is not necessarily a relationship between how confident witnesses are about their testimony and the accuracy of the testimony. Thus, less confident witnesses may be more accurate than confident witnesses. Scientific research has also established 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
- 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

If the defendant testifies,

- you should judge his testimony in the same way that you judge the testimony of any other witness

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.²⁹

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

- 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

²⁹ I note that the prosecution has included "an expert" in this instruction. *The parties must advise me whether or not there will be any "expert" testimony. The parties agree that references to an "expert" are unnecessary, in light of their stipulations.*

You must consider with greater caution and care the testimony, if any, of a witness testifying about participation in a charged crime. 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 that witness's desire to please the prosecutor or to strike a good bargain is for you to decide³⁰

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

³⁰ The prosecution has not requested an instruction on witnesses who were "participants" in the charged offenses or any other witnesses whose testimony should be treated with "greater caution and care." *The parties must advise me whether or not any such instructions are appropriate in this case.* The prosecution indicated that it may call a "participant" witness in rebuttal. Therefore, I deemed it appropriate to include a "greater caution and care" instruction to address such testimony "if any."

No. 25 — OBJECTIONS³¹

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

³¹ My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.03 (2014) (numbered ¶ 2); Prosecution’s Proposed Jury Instruction No. 9.

No. 26 — BENCH CONFERENCES³²

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

³² My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.07 (2014); Prosecution’s Proposed Jury Instruction No. 10.

No. 27 — NOTE-TAKING³³

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.

³³ My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.06A (2014); Prosecution’s Proposed Jury Instruction No. 11.

No. 28 — CONDUCT OF JURORS DURING TRIAL³⁴

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.

³⁴ My “stock” jury instructions. See 8th Cir. Criminal Model 1.08; Prosecution’s Proposed Jury Instruction No. 12.

- 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.³⁵
- 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

³⁵ My “stock” instruction on “implicit bias.”

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 DELIBERATE³⁶

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

³⁶ My “stock” jury instructions. See 8th Cir. Criminal Model 3.12 (2014); Prosecution’s Proposed Jury Instruction No. 13.

- 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 DELIBERATIONS³⁷

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

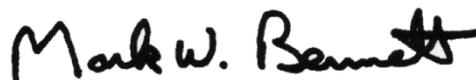
³⁷ My “stock” jury instructions. *See* 8th Cir. Criminal Model 3.12; Prosecution’s Proposed Jury Instruction No. 14.

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 16th day of March, 2015.



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

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CEDRIC MCDONALD,

Defendant.

No. CR 14-3056-MWB

**COURT’S PROPOSED
VERDICT FORM
(03/12/15 REVISED VERSION)**

As to defendant Cedric McDonald, we, the Jury, find as follows:

	COUNT 1: FELON IN POSSESSION OF A FIREARM	VERDICT
Step 1: Verdict	On the “felon in possession of a firearm” offense, as charged in Count 1 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, go on to consider your verdict on Count 2. 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
Step 2: Firearms Possessed	<i>If you found the defendant “guilty” of the offense charged in Count 1, please indicate which one or more of the following firearms you unanimously agree that the defendant illegally possessed.</i>	
	<input type="checkbox"/> P. Beretta-Gardone VT, 12 gauge shotgun, S56E, Ser. No. 55124	
	<input type="checkbox"/> Savage Arms Westfield, Mass. model Savage 24 Series S, .410 shotgun with a .22 barrel on top, Ser. No. E295927	
	<input type="checkbox"/> Remington Fieldmaster model 572, .22 caliber rifle, no ser. no.	
	<input type="checkbox"/> Harrington & Richardson, Topper model 158, .410 shotgun, US Pat. No. 2876576 (no ser. no.)	
	<input type="checkbox"/> Winchester model 74, .22 caliber semi-automatic rifle, Ser. No. 235859A	
	<input type="checkbox"/> Stoeger model Condor I, 20 gauge shotgun, Ser. No. 127949-05	

	___ Remington 870 Express Magnum, 12 gauge pump shotgun, Ser. No. 8089140M
	___ Remington Wingmaster 870, 12 gauge pump shotgun, Ser. No. S430182V
	___ Remington model 700, .17 caliber bolt-action rifle, Ser. No. C6519856
	___ Savage Mark II bolt action, .22 caliber rifle, Ser. No. 2003476
COUNT 1: POSSESSION OF A STOLEN FIREARM	
VERDICT	
Step 1: Verdict	<p>On the “possession of a stolen firearm” offense, as charged in Count 2 and explained in Instruction No. 7No. 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></p>
	<p>___ Not Guilty</p> <p>___ Guilty</p>
Step 2: Stolen Firearms Possessed	<p><i>If you found the defendant “guilty” of the offense charged in Count 2, please indicate which one or more of the following firearms you unanimously agree were stolen and were possessed by the defendant. (After completing this Step, please read the “Certification,” below, sign the Verdict Form, and notify the CSO that you have reached a verdict.)</i></p>
	___ P. Beretta-Gardone VT, 12 gauge shotgun, S56E, Ser. No. 55124
	___ Savage Arms Westfield, Mass. model Savage 24 Series S, .410 shotgun with a .22 barrel on top, Ser. No. E295927
	___ Remington Fieldmaster model 572, .22 caliber rifle, no ser. no.
	___ Harrington & Richardson, Topper model 158, .410 shotgun, US Pat. No. 2876576 (no ser. no.)
	___ Winchester model 74, .22 caliber semi-automatic rifle, Ser. No. 235859A
	___ Stoeger model Condor I, 20 gauge shotgun, Ser. No. 127949-05

CERTIFICATION

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 have 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.

Date

_____ Foreperson	_____ Juror
_____ Juror	_____ Juror