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

UNITED STATES OF AMERICA, Plaintiff, vs. JAMES JOSEPH SHERIDAN, Defendant.	No. 06-CR-115-LRR **FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER 1

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

INSTRUCTION NUMBER 2

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

INSTRUCTION NUMBER 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NUMBER 4

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses, stipulations of the parties and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.

2. Statements, arguments, questions and comments by the lawyers are not evidence.

3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

5. Anything you saw or heard about this case outside the courtroom is not evidence.

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

INSTRUCTION NUMBER 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NUMBER 7

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

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

INSTRUCTION NUMBER 8

You have heard testimony from a person described as an expert. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state his opinion on matters in that field and may also state the reasons for his opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NUMBER 9

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

INSTRUCTION NUMBER 10

The Indictment in this case charges the defendant with one offense. The Indictment charges that, on or before June 30, 2003, the defendant knowingly possessed a stolen firearm.

The defendant has pleaded not guilty to the charge.

As I told you at the beginning of the trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

There is no burden upon the defendant to prove that he is innocent. Accordingly, the fact that defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NUMBER 11

The crime of possessing a stolen firearm has four elements, which are:

One, on or before June 30, 2003, the defendant knowingly possessed a firearm;

Two, at the time of the possession, the firearm was stolen;

Three, at the time of the possession, the defendant knew or had reasonable cause to believe that the firearm was stolen; and

Four, the firearm was transported across a state line at some time during or before the defendant's possession of it.

The government and the defendant have stipulated that the firearm in question was manufactured outside of the State of Iowa and traveled across a state line prior to arriving in the State of Iowa. You must, therefore, treat those facts as having been proved.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of possessing a stolen firearm; otherwise you must find the defendant not guilty of the crime charged.

INSTRUCTION NUMBER 12

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

INSTRUCTION NUMBER 13

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

INSTRUCTION NUMBER 14

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER 15

The law recognizes several kinds of possession. A person may have actual or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" has been used in these instructions, it includes actual as well as constructive possession and also sole as well as joint possession.

INSTRUCTION NUMBER 16

An act is done "knowingly" if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful.

INSTRUCTION NUMBER 17

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

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

INSTRUCTION NUMBER 18

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

(CONTINUED)

INSTRUCTION NUMBER 18 (Cont'd)

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

INSTRUCTION NUMBER 19

Attached to these instructions you will find a Verdict Form. This Verdict Form is simply the written notice of the decision that you reach in this case. The answer to this Verdict Form must be the unanimous decision of the jury.

You will take the Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed on an answer to the Verdict Form, your foreperson will fill out the Form, sign and date it and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdict as accords with the evidence and these instructions.

December 11, 2006
DATE

LINDA R. READE
JUDGE, U. S. DISTRICT COURT