

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONAVAN CROSS,

Defendant.

No. CR 16-4067-MWB

**INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

No. 1 — INTRODUCTION

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

In an Indictment, a Grand Jury has charged defendant Donovan Cross with “prohibited 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 charged offense, and he is presumed absolutely not guilty of that offense, unless and until the prosecution proves his guilt beyond a reasonable doubt.

You must decide whether or not the prosecution has proved the defendant’s guilt on the charged offense 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, these instructions, and any additional oral or written instructions that I may give you. 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 Cross, and not anyone else, is on trial. Also, he is on trial *only* for the offense charged in the Indictment, and not for anything else.

You must return a unanimous verdict on the charge against the defendant.

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
- remains with the defendant throughout the trial
- is enough, alone, for you to find the defendant not guilty of the offense charged against him

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
- means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify
- 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
- means that you must find the defendant not guilty of the offense charged, 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
- may also 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
- is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs
- is proof that leaves you firmly convinced of the defendant's guilt

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

No. 4 — OTHER IMPORTANT TERMS

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

Elements

The 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 the offense charged against the defendant for you to find him guilty of that offense.

Timing

The Indictment alleges an approximate date for the charged offense.

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

Location

You must decide whether the defendant’s conduct occurred 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 offense. The “elements” themselves are set out in **bold**.

**No. 5 — PROHIBITED POSSESSION OF A FIREARM
AND AMMUNITION**

The Indictment charges the defendant with “prohibited possession of a firearm and ammunition.” The defendant denies that he committed this offense.

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

One, on or about June 4, 2016, the defendant was prohibited by federal law from possessing firearms and ammunition because he was convicted of a felony, a user of illegal drugs, or both.

Two, on or about June 4, 2016, the defendant knowingly possessed the firearm, ammunition, or both identified in the Indictment.

“Possession” was defined for you in Instruction No. 4:

The Indictment identifies the firearm and ammunition allegedly involved in this offense as the following:

- a Ruger 9 mm caliber pistol
- 9 mm ammunition

You must determine whether the defendant knowingly possessed one or more of these items.

- the prosecution does not have to prove that the defendant knowingly possessed both the pistol and the ammunition
- a prohibited person is prohibited from possessing even a single firearm or a single round of ammunition

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

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 them.

If you find beyond a reasonable doubt that the firearm or ammunition in question was manufactured in a state other than Iowa, and that the defendant possessed that firearm or ammunition in the State of Iowa, then you may, but are not required to, find that the item in question was transported across a state line.

If the prosecution *does not* prove all of these elements beyond a reasonable doubt, then you must find the defendant not guilty of this offense.

No. 6 — 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. 7 — 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
- 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
- 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, or 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

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

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
- 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 who is testifying

- that he or she participated in the charged offense, or
- pursuant to a plea agreement
 - The plea agreement may be a "cooperation" plea agreement that provides that the prosecution may recommend a less severe

sentence if the prosecutor believes that the witness has provided “substantial assistance”

- A judge cannot reduce a sentence for “substantial assistance” unless the prosecution asks the judge to do so, but if the prosecution does ask, the judge decides if and how much to reduce the witness’s sentence

It is for you to decide

- what weight you think the testimony of such a witness deserves, and
- whether or not such a witness’s testimony has been influenced by
 - the desire to please the prosecution, or
 - a plea agreement

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

No. 8 — 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. 9 — 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. 10 — 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. 11 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and the law in these Instructions and any additional written or oral instructions that I may give. 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 begin your deliberations.
- 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 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, Twitter, or Instagram, 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 and the instructions that I give you. 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. 12 — 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.

- 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 and the instructions that I give you
- 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

- 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.

No. 13 — DUTY DURING DELIBERATIONS

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

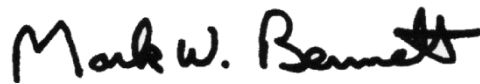
- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of one or more offenses, I will decide what his sentence should be.
- Communicate with 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.
- 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 and sign the Verdict Form.
- 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 14th day of December, 2016.

Handwritten signature of Mark W. Bennett in black ink.

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

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONAVAN CROSS,

Defendant.

No. CR 16-4067-MWB

VERDICT FORM

As to defendant Donovan Cross, we, the Jury, find as follows:

THE ALLEGED “PROHIBITED POSSESSION OF A FIREARM” OFFENSE		VERDICT
Step 1: Verdict	On the offense of “prohibited possession of a firearm and ammunition,” as charged in the Indictment, please indicate your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the question in Step 2. Instead, please sign the verdict form and notify the CSO that you have reached a verdict. If you find the defendant “guilty” of this offense, go on to consider the additional question in Step 2.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Item(s) Possessed	<i>If you found the defendant “guilty” of this offense in Step 1, please indicate whether you find him guilty of prohibited possession of a Ruger 9 mm caliber pistol, 9 mm ammunition, or both the pistol and the ammunition. (After answering this question, please sign the verdict form and notify the CSO that you have reached a verdict.)</i>	
	<input type="checkbox"/> a Ruger 9 mm pistol	
	<input type="checkbox"/> 9 mm ammunition	
	<input type="checkbox"/> both the pistol and the ammunition	

CERTIFICATION

By signing below, each juror certifies the following:

(1) that consideration of the defendant's race, color, religious beliefs, national origin, or sex was not involved in reaching the juror's individual decision, *and*

(2) that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the defendant's race, color, religious beliefs, national origin, or sex.

Date

Foreperson	Juror
Juror	Juror
Juror	Juror
Juror	Juror
Juror	Juror
Juror	Juror