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

UNITED STATES OF AMERICA, Plaintiff, vs. CARL McARTHUR, Defendant.	No. 18-CR-102-CJW-MAR **JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

In the next few moments, I am going to give you instructions about this case and about your duties as jurors. I will also give you additional instructions at a later time. Unless I specifically tell you otherwise, all instructions—both those I give you now and those I give you later—are equally binding on you and must be followed.

The instructions I am about to give you now are in writing and will be available to you in the jury room.

INSTRUCTION NO. 1

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

INSTRUCTION NO. 2

This is a criminal case, brought against the defendant by the United States government. The charge is set forth in what is called an indictment.

Count One (1) of the Indictment charges that, on about March 17, 2018, in the Northern District of Iowa, defendant Carl McArthur, having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, and/or a misdemeanor crime of domestic violence, knowingly possessed in and affecting interstate commerce, a firearm.

The defendant has pleaded not guilty to this charge.

You are instructed that an indictment is simply an accusation. It is not evidence of anything. The defendant has pleaded not guilty and is presumed to be innocent unless and until proven guilty beyond a reasonable doubt. Thus, the defendant begins the trial with a clean slate, 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 during the trial, beyond a reasonable doubt, each element of the crime charged.

There is no burden upon the defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial. Accordingly, if the defendant does not testify, that fact must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 3

It will be your duty as jurors to decide from the evidence whether the defendant is guilty or not guilty of the crime charged. From the evidence, you will decide what the facts are. You are entitled to consider the evidence in light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from those facts that have been established by the evidence. You will then apply those facts to the law that I give you in my instructions. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with it or not.

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.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdicts should be.

Finally, please remember that only this defendant, not anyone else, is on trial here, and that this defendant is on trial only for the crime charged, not for anything else.

INSTRUCTION NO. 4

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses, the documents and other things received as exhibits, and the facts that have been stipulated to—that is, formally agreed to by the parties.

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

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

1. Statements, arguments, questions, and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys, or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by objections. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might be.
4. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
5. Anything you see or hear about this case outside of the courtroom is not evidence.

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INSTRUCTION NO. 4 (Cont'd)

During the trial, documents and objects may be referred to but not admitted into evidence. In such a case, these items will not be available to you in the jury room during deliberations.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you if this occurs, and I will instruct you on the purposes for which the item can and cannot be used.

INSTRUCTION NO. 5

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

INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and of the value to be given to the testimony of each witness who testifies 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 says, or only part of it, or none of it.

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

In deciding whether to believe a witness, keep in mind that people sometimes hear or see things differently, and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection, a lapse of memory, or an intentional falsehood, and that may depend on whether the contradiction has to do with an important fact or only a small detail.

If the defendant decides to testify, you should judge his testimony in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 7

In the 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 that the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

You may hear evidence that a certain witness was once convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give the witness's testimony.

You may hear evidence that certain witnesses made plea agreements with the government. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the plea agreement is for you to determine.

Finally, you may hear evidence that certain witnesses hope to receive a reduced sentence on criminal charges pending against them in return for their cooperation with the government in this case. If the prosecutor handling a witness's case believes the witness provided substantial assistance, that prosecutor can file in the court in which the charges are pending against the witness a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion.

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INSTRUCTION NO. 7 (Cont'd)

If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

You may give the testimony of these witnesses such weight as you think it deserves. Whether or not testimony of the witnesses may have been influenced by the witnesses' hope of receiving a reduced sentence is for you to decide.

INSTRUCTION NO. 8

You may hear testimony from persons described as experts. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

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

INSTRUCTION NO. 9

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

INSTRUCTION NO. 10

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

INSTRUCTION NO. 11

The crime of possession of a firearm by a felon and person convicted of domestic violence, as charged in Count 1 of the Indictment, has three elements, which are:

One, the defendant had been convicted of a crime punishable by imprisonment for more than one year, namely:

1. On or about November 20, 2009, defendant was convicted in United States District Court for the Northern District of Iowa, Case No. CR-09-3-1-LRR, of being a prohibited person in possession of a firearm; *and/or*,
2. The defendant has been convicted of a misdemeanor crime of domestic violence, namely: on or about June 9, 2003, defendant was convicted in the Iowa District Court for Linn County, Case No. SRCR51361-0603, of assault causing bodily injury (domestic abuse).

Two, on about March 17, 2018, the defendant, knowing that he had previously been convicted of a crime described in element 1, knowingly possessed a firearm, that is a Taurus Model 45-410 "the Judge" .45 caliber revolver; and

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

If you have found beyond a reasonable doubt that the firearm in question was manufactured in a state other than Iowa, then you may, but are not required to, find that it was transported across a state line.

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.

If all these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime in Count 1; otherwise, you must find the defendant not guilty of the crime charged in Count 1.

INSTRUCTION NO. 12

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

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

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

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

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

INSTRUCTION NO. 13

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

INSTRUCTION NO. 14

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

INSTRUCTION NO. 15

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

INSTRUCTION NO. 16

At the end of the trial, you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult. Therefore, you must pay close attention to the testimony as it is given.

If you wish, you may take notes during the presentation of evidence to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you so that you do not hear other answers by the witnesses.

During deliberations, in any conflict between your memory and your own notes or the notes of a fellow juror, 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.

Before we begin the evidence, we will give each juror an envelope with a pad and pen in it. The envelopes are numbered according to your seat in the jury box. When you leave for breaks or at night, please put your pad and pen in the envelope and leave the envelope on your chair. Your notes will be secured, and they will not be read by anyone. At the end of the trial and your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 17

During the trial, it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference while the jury is present in the courtroom or by calling a recess. If a bench conference is held in the courtroom, we will switch on what we refer to as "white noise" so that the jurors cannot hear what is being said at the bench. While the bench conferences are being conducted, you should feel free to stand and stretch and visit amongst yourselves about anything except the case.

INSTRUCTION NO. 18

During the course of the trial, to ensure fairness, you as jurors must obey the following rules.

First, do not talk amongst yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, do not use any electronic device or media, such as the telephone, a cell or smart phone, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, YouTube, or Twitter, to communicate to anyone any information about this case, or your opinions concerning it, until the trial has ended and you have been discharged as jurors.

Fourth, when you are outside of the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it, until the trial has ended and your verdict has been accepted by me. If someone should try to talk with you about the case during the trial, please report it to me through the Court Security Officer.

Fifth, during the trial, you should not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall or the like, it is because they are not supposed to talk or visit with you.

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INSTRUCTION NO. 18 (Cont'd)

Sixth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case, or about anyone involved with it. In fact, until the trial is over, I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but, if there are, you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Seventh, do not do any research or make any investigation about the case on your own. Do not consult any reference materials such as the Internet, books, magazines, dictionaries, or encyclopedias. Do not contact anyone to ask them questions about issues that may arise in this case. Remember, you are not permitted to talk to anyone (except your fellow jurors) about this case or anyone involved with it until the trial has ended and I have discharged you as jurors.

Eighth, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

INSTRUCTION NO. 19

The trial will proceed in the following manner:

First, the attorney for the government will make an opening statement. Next, the attorney for the defendant may, but does not have to, make an opening statement. An opening statement is not evidence, but is simply a summary of what the attorneys expect the evidence to be.

The government will then present its evidence, and the attorney for the defendant may cross-examine the government's witnesses. Following the government's case, the defendant may, but does not have to, present evidence, testify, or call other witnesses. If the defendant calls witnesses, the attorney for the government may cross-examine them.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. After that, I will instruct you further regarding your deliberations, and you will retire to deliberate on your verdict.

Date

C.J. Williams
United States District Judge
Northern District of Iowa

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

UNITED STATES OF AMERICA, Plaintiff, vs. CARL McARTHUR, Defendant.	No. 18-CR-102-CJW-MAR **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 before you begin your deliberations.

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 the instructions I gave you at the beginning of and during trial are not repeated here.

INSTRUCTION NO. 20

You have heard evidence that the defendant possessed a firearm on two occasions in late May or June of 2018. You may consider this evidence only if you (unanimously) find it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable. This is a lower standard than proof beyond a reasonable doubt.

If you find this evidence has been proved, then you may consider it to help you decide whether the defendant knowingly possessed a firearm on March 17, 2018, or if there was an absence of mistake or lack of accident. You should give it the weight and value you believe it is entitled to receive. If you find that this evidence has not been proved, you must disregard it.

Remember, even if you find that the defendant may have committed similar acts on other occasions, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts on other occasions. The defendant is on trial only for the crime charged, and you may consider the evidence of other acts only on the issues stated above.

INSTRUCTION NO. 21

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 into 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 agreement if you can do so without violence to individual judgment because your verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decisions, but only after you have considered all of 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 your discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdict.

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

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

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INSTRUCTION NO. 21 (Cont'd)

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

INSTRUCTION NO. 22

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

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

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

_____ _____

Date

C.J. Williams
United States District Judge
Northern District of Iowa

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

UNITED STATES OF AMERICA, Plaintiff, vs. CARL McARTHUR, Defendant.	No. 18-CR-102-CJW-MAR **VERDICT FORM** **COUNT 1**

COUNT 1

We, the Jury, unanimously find the defendant, CARL McARTHUR, Not Guilty / Guilty of the crime charged in Count One (1) of the Indictment.

> **NOTE:** If you unanimously find the defendant not guilty of the above crime, have your foreperson circle "not guilty" in the above space, and sign and date this Verdict Form. Do not answer the Interrogatory Form.
>
> If you unanimously and beyond a reasonable doubt find the defendant guilty of the above crime, have your foreperson circle "guilty" in the above space, and sign and date this Verdict Form. Then, go on to answer the Interrogatory Form.

_____ _____

FOREPERSON DATE

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

UNITED STATES OF AMERICA, Plaintiff, vs. CARL McARTHUR, Defendant.	No. 18-CR-102-CJW-MAR **INTERROGATORY FORM** **COUNT 1**

If you found the defendant, CARL McARTHUR, guilty of the crime charged in Count 1 of the Indictment, please answer the following question, then have your foreperson sign and date this Interrogatory Form.

If you found the defendant, CARL McARTHUR, not guilty of the crime charged in Count 1 of the Indictment, do not answer the following questions.

QUESTION: Answer this question by placing a check mark (✔) on **all** of the following spaces that you find the government has proved beyond a reasonable doubt.

We, the Jury, unanimously and beyond a reasonable doubt find that the defendant, CARL McARTHUR, was previously convicted of the following offense(s):

_____ On or about November 20, 2009, defendant was convicted in United States District Court for the Northern District of Iowa, Case No. CR-09-3-1-LRR, of being a prohibited person in possession of a firearm;

_____ On or about June 9, 2003, defendant was convicted in the Iowa District Court for Linn County, Case No. SRCR51361-0603, of assault causing bodily injury (domestic abuse);

_____ _____

FOREPERSON DATE