IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	CR. NO. 97-20226
	)	
TERRY L. ADAMS,	)	
	)	
	)	
Defendant.	)	

Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished you will go to the jury room and begin your discussions -- what we call your deliberations.

It will be your duty to decide whether the government has proved beyond a reasonable doubt the specific facts necessary to find the defendant guilty of the crimes charged in the indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial; and you must not be influenced in any way by either sympathy or prejudice for or against the defendant or the government.

You must also follow the law as I explain it to you whether you agree with that law or not; and you must follow all of my instructions as a whole. You may not single out, or disregard, any of the Court's instructions on the law.

The indictment or formal charge against the defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require the defendant to prove his innocence or produce any evidence at all. As to each count, the government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so you must find the defendant not guilty as to that count.

While the government's burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning a defendant's guilt.

A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

The defendant has been charged with 25 crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on the other charges.

As stated earlier you must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses, the exhibits admitted in the record and any facts of which the court has taken judicial notice. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that the defendant is either guilty or not guilty. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Also you should not assume from anything I may have said or done that I have any opinion concerning any of the issues in this case. Except for my instructions to you, you should disregard anything I may have said in arriving at your own decision concerning the facts.

7.19
Judicial
Notice

You are instructed that the Court has taken judicial notice of the fact that Memphis, Tennessee and Shelby County, Tennessee are located in the Western District of Tennessee.

Since you are the fact-finders in this case, you may, but are not required to, accept this fact as conclusively established.

Stipulations

Before the trial of this case, the parties agreed to the truth of certain facts in this case. As a result of this agreement, plaintiff and defendant entered into certain stipulations in which they agreed that the stipulated facts could be taken as true without either party presenting further proof on the matter. This procedure is often followed to save time in establishing facts which are undisputed.

The parties have stipulated to the following fact:

Defendant Terry L. Adams, prior to August, 1996, had been convicted in court of a crime punishable by imprisonment for a term exceeding one year.

Number of Witnesses
Credibility

Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling. You may decide that the testimony of a smaller number of witnesses concerning any fact in dispute is more believable than the testimony of a larger number of witnesses to the contrary.

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the person impress you as one who was telling the truth? Did he or she have any particular reason not to tell the truth? Did he or she have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did he or she appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony he or she gave before you during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and that may depend on whether it has to do with an important fact or with only an unimportant detail.

A defendant has an absolute right not to testify. The fact that he did not testify cannot be considered by you in any way. Do not even discuss it in your deliberations.

Remember that it is up to the government to prove the defendant guilty beyond a reasonable doubt. It is not up to the defendant to prove that he is innocent.

Law Enforcement
Witnesses

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the city, county, state, or federal government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witnesses and to give to that testimony whatever weight, if any, you find it deserves.

7.03
Expert Testimony

You have heard the testimony of Thomas Zimmer, an expert regarding origin of motor vehicles, and John Prickett, an firearms expert. An expert witness has special knowledge or experience that allows the witness to give an opinion.

You do not have to accept an expert's opinion. In deciding how much weight to give it, you should consider the witness's qualifications and how he reached his conclusions.

Remember that you alone decide how much of a witness's testimony to believe, and how much weight it deserves.

I told you at the outset that this case was initiated through an indictment. An indictment is but a formal method of accusing the defendant of a crime. It includes the government's theory of the case, and we will be going over in a few minutes the substance of the indictment. The indictment is not evidence of any kind against an accused.

The defendant has pleaded not guilty to the charges contained in the indictment. This plea puts in issue each of the essential elements of the offenses described in these instructions and imposes upon the government the burden of establishing each of these elements by proof beyond a reasonable doubt.

I will read the indictment to you once again so that you are well aware of the charges made in the indictment.

The indictment reads:

Carjacking 18 U.S.C. § 2119

Counts 1, 3, 8, 10, 16, and 18, of the indictment charge the defendant with "carjacking" in violation of 18 U.S.C. § 2119.

18 U.S.C. § 2119 provides, in relevant part, that:

> Whoever, with intent to cause death or serious bodily injury takes a motor vehicle that has been transported, shipped or received in interstate or foreign commerce from the person or presence of another by force or violence or by intimidation [shall be guilty of a crime].

(P-2)
Elements

In order to meet its burden of proof that the defendant committed "carjacking", the government must establish beyond a reasonable doubt each of the following elements:

1. That the defendant took a motor vehicle from the person or presence of another;
2. That the defendant did so by force, violence, or intimidation;
3. That the defendant intended to cause serious bodily injury;
4. That the motor vehicle was either transported or shipped or received in interstate or foreign commerce; and
5. That the defendant acted knowingly and willfully.

(P-3)

Force and Violence
or Intimidation - Defined

The government can meet its burden on the second element of the crime of carjacking by proving beyond a reasonable doubt, that when taking the motor vehicle from the person or another, the defendant either used force or violence, or that the defendant acted in an intimidating manner. The government does not have to prove that the defendant used force or violence if it proves that the defendant acted in an intimidating manner.

The phrase "intimidating manner" means that the defendant said or did something that would make an ordinary person fear bodily harm. However, it is not necessary for the government to prove that the victim was actually frightened in order to establish that the defendant acted in an intimidating manner. Your focus should be on the defendant's behavior. Although the government does not have to show that the defendant's behavior caused or could have caused terror, panic, or hysteria, the government does have to show that an ordinary person would have feared bodily harm because of it.

Intent

In order to satisfy the third element, it is sufficient for the government to establish that the defendant intended to cause serious bodily injury if the victim driver refused to turn over his or her vehicle.

In a carjacking case in which the driver surrenders or otherwise loses control of his car without the defendant attempting to inflict or actually inflicting serious bodily harm, the government must prove beyond a reasonable doubt that the defendant would have at least attempted to seriously harm the driver if that action had been necessary to complete the taking of the car.

The requirement is satisfied when the government proves that at the moment the defendant demanded or took control over the driver's automobile the defendant possessed the intent to seriously harm the driver if necessary to steal the car.

Interstate and Foreign Commerce

If a motor vehicle has ever at any time crossed or been transported across state or national lines, than that motor vehicle has been transported, shipped, or received in interstate or foreign commerce.

If the motor vehicle in question, for example, was driven by anyone across a state line at any time prior to the carjacking or was manufactured in a place other than Tennessee, it has been transported, shipped, or received in interstate commerce.

The Indictment and the Statute
18 U.S.C. § 1951

Counts 5 and 12 of the indictment charge the defendant with obstructing interstate commerce through the use of robbery.

The indictment charges the defendant with violating section 1951 of Title 18 of the United States Code. That section, in pertinent part, provides:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of an article or commodity in commerce, by robbery or extortion, or attempts or conspires to do so, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this action [shall be guilty of a crime].

Definition of Robbery

Robbery is the unlawful taking of personal property from another person, against that person's will. This is done by threatening or actually using force, violence, or fear of injury, immediately or in the future to person or property.

In order to meet its burden of proof that the defendant committed robbery, the government must establish beyond a reasonable doubt each one of the following elements, or parts, of the crime.

1. That the defendant obtained or took the personal property (such as money or other tangible items) of another, or from the presence of another; and
2. That the defendant took this property against the victim's will by means of actual or threatened force, violence, or fear of injury, whether immediate or in the future; and
3. That, as a result of the defendant's actions, interstate commerce, or an item moving in interstate commerce, was delayed, obstructed, or affected in any way or degree.

In this case, there is no issue as to what constitutes "personal property" for purposes of the first element; nor is there an issue as to what is considered "interstate commerce" for purposes of the third element.

With respect to the first element - the obtaining of "the personal property of another, or from the presence of another" - whether the objects constitute personal property is a question of law for me to decide. It is not a question of fact for you, the jury, to determine. I instruct you that the items the defendant is charged with taking (i.e., money and firearms) are personal property.

With respect to the third element - that "interstate commerce, or an item moving in interstate commerce, was delayed, obstructed, or affected in some way as a result of the defendant's actions" - it is a question of fact for you, the jury to determine, in accordance with my instructions, whether such a delay, obstruction or effect has occurred.

Your main concern is with the second and third elements of the crime of obstructing interstate commerce by robbery. The first of these elements is the taking of a person's property against his will by the use, or threatened use, of force, violence, or fear. You must determine whether the defendant obtained the property by using any of these unlawful means, as set forth in the indictment. It is not necessary that the government prove that force, violence, and fear were all used or threatened. The government satisfies its burden of proving an unlawful taking if it proves beyond a reasonable doubt that any of these methods were employed.

In considering whether the defendant used, or threatened to use force, violence, or fear, you should give those words their common and ordinary meaning, and understand them as you normally would. The violence does not have to be directed at the person whose property was taken. The use or threat of force or violence might be aimed at a third person. A threat may be made verbally or by a physical gesture. Whether a statement or physical gesture by the defendant actually was a threat depends upon the surrounding facts.

As I have just instructed you, you must determine whether the defendant used, or threatened to use, force, violence, or fear, to unlawfully obtain the property. Fear exists if at least one victim experiences anxiety, concern, or worry over expected personal harm or business loss, or over financial or job security. The existence of fear must be determined by the facts existing at the time of the defendant's actions.

Your decision whether the defendant used or threatened fear of injury involves a decision about the victim's state of mind at the time of the defendant's actions. It is obviously impossible to ascertain or prove directly a person's subjective feeling. You cannot look into a person's mind to see what his state of mind is or was. But a careful consideration of the circumstances and evidence should enable you to decide whether fear would reasonably have been the victim's state of mind.

Looking at the situation and the actions of people involved may help you determine what their state of mind was. You can consider this kind of evidence - which is technically called "circumstantial evidence" - in deciding whether property was obtained by the defendant through the use or threat of fear.

You have also heard the testimony of witnesses describing their state of mind - that is, how he or she felt - in giving up the property. This testimony was allowed so as to help you in deciding whether the property was obtained by fear. You should consider this testimony for that purpose only.

If you decide that the defendant obtained another's property, against his/her will, by the use or threat of force, violence, or fear of injury, you must then decide whether this action would affect interstate commerce in any way or degree. You must determine whether there is an actual or potential effect on commerce between any two or more states, or commerce within one state that goes through any place outside of that state.

Minimal Effect on Interstate Commerce

If you decide that there was any effect at all on interstate commerce, then that is enough to satisfy this element. The effect can be minimal. For example, if a successful robbery of money would prevent the use of those funds to purchase articles which travel through interstate commerce, that would be a sufficient effect on interstate commerce.

The term "obstructs, delays, or affects commerce" means any action which, in any manner or to any degree, interferes with, changes, or alters the movement or transportation or flow of goods, merchandise, money, or other property in commerce.

If the government proves beyond a reasonable doubt that the victim business engaged in business across state lines, or sold products obtained from out of state, purchased goods from out of state, or served out of state customers, then you may find that the defendant "obstructed, delayed, or affected" commerce as that term is used in these instructions.

If you decide that there was any effect at all on interstate commerce, then that is enough to satisfy this element. The effect can be minimal.

You do not have to decide whether the effect on interstate commerce was harmful or beneficial to a particular business or to commerce in general. The government satisfies its burden of proving an effect on interstate commerce if it proves beyond a reasonable doubt any effect, whether it was harmful or not.

The defendant need not have intended or anticipated an effect on interstate commerce. You may find the effect is a natural consequence of his actions. If you find that the defendant intended to take certain actions - that is, he did the acts charged in the indictment in order to obtain property - and you find those actions have either caused, or would probably cause, an effect on interstate commerce, then you may find the requirements of this element have been satisfied.

If you decide that interstate commerce would potentially or probably be affected if the defendant had successfully and fully completed his actions, then the element of affecting interstate commerce is satisfied. You do not have to find that interstate commerce was actually effected.

However, if the defendant has finished his actions, and done all he intended to do, and you determine there has been no effect on interstate commerce, then you cannot find the defendant guilty of counts 5 and 12.

In Counts 2, 4, 6, 9, 11, 13, 17, 19, and 23 the defendant is charged with using a firearm to commit a crime of violence.

The relevant statute on this subject is Title 18, United States Code section 924(c), which provides:

> Whoever, during and in relation to any crime of violence for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall [be guilty of a crime].

Under Counts 2, 4, 6, 9, 11, 13, 17, 19, and 23, the defendant is charged with using or carrying a firearm during the commission of the crimes of violence charged in Counts 1, 3, 5, 8, 10, 12, 16, 18, and 22.

If upon all of the evidence you find that the government has failed to prove Counts 1, 3, 5, 8, 10, 12, 16, 18, and 22 beyond a reasonable doubt, then you will not proceed to Counts 2, 4, 6, 9, 11, 13, 19, and 23. Those counts are to be considered only if you first find the defendant guilty under Counts 1, 3, 5, 8, 10, 12, 16, 18, and 22 as charged.

In reaching your verdict on Counts 2, 4, 6, 9, 11, 13, 17, 19, and 23, you may consider the evidence of Counts 1, 3, 5, 8, 10, 16, 18, and 22 only for the purpose of determining whether the elements of Counts 2, 4, 6, 9, 11, 13, 17, 19, and 23 have been satisfied.

As to Counts 2, 4, 6, 9, 11, 13, 17, 19, and 23, the government must prove each of the following elements beyond a reasonable doubt to sustain its burden of proving the defendant guilty:

First, that the defendant committed a crime of violence for which might be prosecuted in a court of the United States (i.e., that defendant committed the crime set out in Counts 1, 3, 5, 8, 10, 12, 16, 18, 22).

Second, that the defendant knowingly used a firearm during and in relation to the commission of the crime charged in Counts 1, 3, 5, 8, 10, 12, 16, 18, 22.

First Element
Commission of the Predicate Crime

The first element the government must prove beyond a reasonable doubt is that the defendant committed a crime of violence for which he might be prosecuted in a court of the United States.

Defendant is charged in Counts 1, 3, 5, 8, 10, 12, 16, and 18 of the indictment with committing crimes of robbery or carjacking. I instruct you that the crimes of robbery and carjacking are crimes of violence. However, it is for you to determine that the government has proven beyond a reasonable doubt that the defendant committed each crime of robbery or carjacking as charged.

Defendant is charged in Count 22 with committing the crime of assault or interference, etc. with a federal officer. Such a crime may also be a crime of violence under 18 U.S.C. § 924(c). It is, of course, for you to determine whether the government has proved beyond a reasonable doubt that the defendant committed that crime as charged.

Second Element
Knowing Use of Firearm During and in Relation to Commission of Predicate Crime

The second element the government must prove beyond a reasonable doubt is that the defendant knowingly used a firearm during and in relation to the commission of the crimes charged in Counts 1, 3, 5, 8, 10, 12, 16, 18, and 22.

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

In order to prove that the defendant used the firearm, the government must prove beyond a reasonable doubt an active employment of the firearm by the defendant during and in relation to the commission of the crime of violence. This does not mean that the defendant must actually fire or attempt to fire the weapon, although those would obviously constitute use of the weapon. Brandishing, displaying or even referring to the weapon so that others present knew that the defendant had the firearm available if needed all constitute use of the firearm. However, the mere possession of a firearm at or near the site of the crime without active employment as I just described it is not sufficient.

To satisfy this element, you must also find that the defendant knowingly carried the firearm. This means that he carried the firearm purposely and voluntarily, and not by accident or mistake. It also means that he knew that the weapon was a firearm, as we commonly use the word. However, the government is not required to prove that the defendant knew that he as breaking the law.

Title 18, United States Code, § 922(g)

Counts 7, 14, 15, 20, and 21 of the indictment charges the defendant with being a person convicted of a crime who possessed a firearm shipped in interstate commerce.

The relevant statute on the subject is 18 U.S.C. § 922(g) which provides:

> It shall be unlawful for any person ... who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year ... to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate commerce.

Purpose of the Statute

Congress has passed a series of laws aimed at giving support to federal, state and local law enforcement officials in combating crime.

We are not concerned with the wisdom or the policy of those laws. If in fact a violation has occurred, the law should be enforced.

In general, these laws include provisions which prohibit certain categories of people from possessing or receiving firearms which were shipped in interstate commerce, and requires any person in the business of dealing in firearms to be licensed.

The government contends that the defendant was within the class of people prohibited from possessing firearms or ammunition shipped in interstate commerce because he had been convicted of a crime punishable by more than a year in jail.

Elements of the Offense

The government must prove each of the following elements beyond a reasonable doubt in order to sustain its burden of proving the defendant to be guilty of Counts 7, 14, 15, 20, and 21:

First, that the defendant had been convicted, in any court, of a crime punishable by imprisonment for a term exceeding one year, as charged;

Second, that the defendant knowingly possessed a firearm as charged; and

Third, that the possession charged was in or affecting interstate commerce.

Defendant's Prior Conviction

The first element the government must prove beyond a reasonable doubt before you can convict is that before the date(s) the defendant is charged with possessing the firearm, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year.

The government and the defendant have stipulated that before the date(s) the defendant is charged with possessing a firearm the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one (1) year.

Therefore, the first element has been satisfied. This, of course, is for you, the jury to decide.

The second element which the government must prove beyond a reasonable doubt is that on or about the dates set forth in the indictment the defendant knowingly possessed a firearm.

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

To "possess" means to have something within a person's control. This does not necessarily mean that the defendant must hold it physically, that is, have actual possession of it. As long as the firearm is within the defendant's control, he possesses it. If you find that the defendant either had actual possession of the firearm, or that he had the power and intention to exercise control over the firearm, even though it was not in his physical possession, you may find that the government has proven possession.

The law also recognizes that possession may be sole or joint. If one person alone possesses it, that is sole possession. However, it is possible that more than one person may have the power and intention to exercise control over the firearm. This is called joint possession. If you find that the defendant had such power and intention, then he possessed the firearm under this

element even if he possessed it jointly with another. Proof of ownership of the firearm or ammunition is not required.

To satisfy this element, you must also find that the defendant knowingly possessed the firearm. This means that he possessed the firearm purposely and voluntarily, and not by accident or mistake. It also means that he knew that the weapon was a firearm, as we commonly use the word. However, the government is not required to prove that the defendant knew that he was breaking the law.

2.10
Constructive Possession

Next, I want to explain something about possession. The government does not necessarily have to prove that the defendant physically possessed the firearm for you to find him guilty of this crime. The law recognizes two kinds of possession -- actual possession and constructive possession. Either one of these, if proved by the government, is enough to convict.

To establish actual possession, the government must prove that the defendant had direct, physical control over the firearm, and knew that he had control of it.

To establish constructive possession, the government must prove that the defendant had the right to exercise physical control over the firearm, and knew that he had this right, and that he intended to exercise physical control over the firearm at some time, either directly or through other persons.

For example, if you left something with a friend intending to come back later and pick it up, or intending to send someone else to pick it up for you, you would have constructive possession of it while it was in the actual possession of your friend.

But understand that just being present where something is located does not equal possession. The government must prove that the defendant had actual or constructive possession of the firearm, and knew that he did, for you to find him guilty of this crime. This, of course, is all for you to decide.

Joint Possession (2.11)

One more thing about possession. The government does not have to prove that the defendant was the only one who had possession of the firearm in the count you are considering. Two or more people can together share actual or constructive possession over property. And if they do, both are consider to have possession as far as the law is concerned.

But remember that just being present with others who had possession is not enough to convict. The government mut prove that the defendant had either actual or constructive possession of the firearm in the count you are considering, and knew that he did, for you to find him guilty of the crime. This, again, is all for you to decide.

The third element the government must prove beyond a reasonable doubt is that the firearm the defendant is charged with possessing was in or affecting interstate commerce.

This means that the government must prove that at some time prior to the defendant's possession, the firearm had traveled in interstate commerce. It is sufficient for the government to satisfy this element by proving that at any time prior to the date charged in the indictment, the firearm crossed a state line. It is not necessary that the government prove who carried it across state lines or how it was transported. It is also not necessary for the government to prove that the defendant knew that the firearm had previously traveled in interstate commerce.

(P-7)
Assault Upon Federal Officer
18 U.S.C. § 111

The indictment in Counts 22, 24, and 25 charges the defendant with assault upon a federal officer.

Section 111 of Title 18 of the United States Code provides in part:

> Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any [federal officer] while engaged in or on account of the performance of official duties [is guilty of a crime.]

(P-8)
Elements

In order to find the defendant guilty of the crime charged, the government must prove beyond a reasonable doubt each of the following elements:

1. That on or about the date specified in the indictment, the person you are considering named in the indictment was a federal officer as I will define that term for you;
2. That at that time, the defendant forcibly assaulted *or* resisted *or* opposed *or* impeded *or* intimidated *or* interfered with the officer you are considering;
3. That at the time, the officer you are considering was engaged in the performance of his official duties;
4. That the defendant acted willfully; and
5. That the defendant used a deadly or dangerous weapon to commit such acts.

Federal Officer

The first element that the government must prove beyond a reasonable doubt is that on or about the date specified in the indictment, Thomas Norris, Steve Gobish, and Bruce Townsend were federal officers.

I instruct you that a federal officer includes Special Agents of the Secret Service. However, it is for you to determine if Thomas Norris, Steve Gobish, and Bruce Townsend held that title at the time in question.

The government does not have to prove that the defendant knew the identity of the officers or that the defendant knew that the persons were federal officers. The crime of assault on a federal officer is designed to protect federal officers acting in pursuit of their official functions, and therefore, it is sufficient to satisfy this element for the government to prove that the persons were federal officers at the time of the assault. Whether the defendant knew that the officers were federal officers at the time is irrelevant to such a determination, and should not be considered by you.

(P-10)
Forcible Conduct

The second element the government must prove beyond a reasonable doubt is that the defendant "forcibly assaulted *or* resisted *or* opposed *or* impeded *or* intimidated *or* interfered with" the officer in the count you are considering.

Although the indictment alleges that the defendant "forcibly assaulted *or* resisted *or* opposed *or* impeded *or* intimidated *or* interfered with" the officer, I instruct you that it is not necessary for the government to prove that the defendant did all of those things, that is, assaulted, resisted, opposed, and so forth. It is sufficient if the government proves beyond a reasonable doubt that the defendant did any one of these several alternative acts as charged. You must, however, be unanimous in your finding of which of the acts has been proven. I will define for you the acts specified by the statute. All of the acts – assault, resist, oppose, impede, intimidate, and interfere with – are modified by the word "forcibly." Thus, before you can find the defendant guilty you must find, beyond a reasonable doubt, that he acted forcibly. Forcibly means by use of force. Physical force is obviously sufficient. You must also find that a person who, in fact, has the present ability to inflict bodily harm upon another and who threatens or attempts to inflict bodily harm upon such

person has acted forcibly. In such a case, the threat must be a present one.

(P-11)
Assault

An "assault" is an unlawful attempt to by force and violence do injury to the person of another, with such apparent present possibility of carrying out such an attempt as to put the person against whom the attempt was made in fear of personal violence.

(P-12)
Resist

The word “resist” means opposing by physical power, striving against, exerting one’s self to counteract, defeat, or frustrate.

(P-13)

Oppose, Impede, Intimidate or Interfere

The word "oppose" means to resist by physical means, "impede" means stopping progress, obstructing or hindering; "intimidate" means to make timid or fearful, to inspire or affect with fear, to frighten, to deter, or overawe. "Interfere with" means to come into collision with, to intermeddle, to hinder, to impose, to intervene.

(P-14)

Engaged in the Performance of Official Duties

The third element the government must prove beyond a reasonable doubt is that at the time of the alleged assault opposition, etc., the officer in the count you are considering was engaged in the performance of his official duties. You may find the officer in the count you are considering was so engaged if you find that, at the time of the alleged assault, he was acting within the scope of what he was employed to do. On the other hand, if you find that the officer was involved in a personal venture of his own, then you must acquit the defendant of the crime charged.

(P-15)
Willfulness

The fourth element that the government must prove beyond a reasonable doubt is that the defendant committed the act or acts charged in the indictment willfully. In other words, you must be persuaded that the defendant acted voluntarily and intentionally, and not by mistake or accident.

(P-16)
Deadly or Dangerous Weapon

The last element the government must prove beyond a reasonable doubt is that the defendant used a deadly or dangerous weapon to assault, resist, oppose, impede, intimidate, or interfere with the officer. Whether the object specified in the indictment is a deadly or dangerous weapon depends on the facts of the particular case. Almost any object which as used, or attempted to be used, may endanger the life or inflict serious bodily harm can be a deadly or dangerous weapon. It is for you to decide, on the facts of this case, whether the firearm and automobile allegedly used by the defendant was, in fact, a deadly or dangerous weapon.

You will note that the indictment charges that the offense was committed "on or about" a certain date. The government does not have to prove with certainty the exact date of the alleged offense. It is sufficient if the government proves beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

The word "knowingly," as that term is used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

Flight (7.14)

You have heard testimony that after certain of the crimes are supposed to have been committed, the defendant escaped, fled, or attempted to escape.

If you believe that the defendant escaped, fled, or attempted to escape, then you may consider this conduct, along with all the other evidence, in deciding whether the government has proved beyond a reasonable doubt that he committed the crimes charged. This conduct may indicate that the defendant thought he was guilty and was trying to avoid punishment. On the other hand, sometimes an innocent person may escape, attempt to escape, or flee out of fear or to avoid prosecution, or for some innocent reason.

An escape, flight, or attempt to escape, of course, alone is insufficient to establish the commission of any crime charged. It is merely one fact that you may consider in determining whether the government has proved each element of the count you are considering beyond a reasonable doubt.

(2.08)
Inferring Required Mental State

Next, I want to explain something about proving a defendant's state of mind.

Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that the defendant knowingly did, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

4.01
Aiding and Abetting

Part of the government's theory is that, prior to Chester Adams' arrest on September 7, 1997, Terry Adams and Chester Adams operated as a criminal partnership. Therefore, as to the offenses alleged to have occurred prior to September 7, 1997 (i.e., Counts 1 through 17), it is not necessary for you to find that defendant Terry Adams personally committed the crime you are considering himself. You may also find him guilty if he intentionally helped or encouraged his brother Chester Adams to commit the crime. A person who does this is called an aider and abettor.

But for you to find the defendant guilty of Count 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, or 17, as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt as to the count you are considering:

(1) First, that the crime set out in the count you are considering was committed.

(2) Second, that the defendant helped to commit the crime or encouraged someone else to commit the crime in the count you are considering.

(3) And third, that the defendant intended to help commit or encourage the crime in the count you are considering.

Proof that the defendant may have known about the crime you are considering, even if he was there when it was committed, is not enough for you to find him guilty as an aider and abettor. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more it is not enough.

What the government must prove is that the defendant did something to help or encourage the crime with the intent that the crime be committed.

If you are convinced that the government has proved, as to the count you are considering, all of these elements, say so by returning a guilty verdict. If you have a reasonable doubt about any one of these elements, then you cannot find the defendant guilty of the count you are considering as an aider and abettor.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty on each count. The defendant is on trial only for the specific offenses alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted the matter of punishment is for the judge to determine.

You are here to determine the whether or not the government has proven the accused defendant guilty beyond a reasonable doubt from the evidence in this case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. You must determine whether or not the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused without regard to any belief you may have about guilt or innocence of any other person or persons.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way you are judges -- judges of the facts. Your only interest is to seek the truth from the evidence in the case.

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience. The verdict form will be placed in a folder and handed to you by the Marshall. At any time that you are not deliberating (i.e., when at lunch or during a break in deliberations), the folder and verdict form should be delivered to the Marshall who will deliver it to the courtroom clerk for safekeeping.

[EXPLAIN VERDICT]

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your foreperson fill in the verdict form, date and sign it, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you,

however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.

If you feel a need to see the exhibits which are not being sent to you for further examination, advise the marshal and I will take up your request at that time.

[ANY JURY ALTERNATES NOT ALREADY EXCUSED,
SHOULD BE EXCUSED AT THIS TIME].

You may now retire to begin your deliberations.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	CR. NO. 97-20226
	)	
TERRY L. ADAMS,	)	
	)	
	)	
Defendant.	)	

V E R D I C T

We, the jury, on the charges in the indictment for our verdict say:

We find the defendant, Terry L. Adams, as to Count 1, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 2, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 3, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 4, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 5, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 6, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 7, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 8, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 9, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 10, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 11, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 12, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 13, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 14, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 15, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 16, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 17, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 18, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 19, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 20, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 21, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 22, _____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 23,

_____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 24,

_____. (Guilty or Not Guilty)

We find the defendant, Terry L. Adams, as to Count 25,

_____. (Guilty or Not Guilty)

_____ _____

DATE FOREPERSON

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