

APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4762

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRICK MICHAEL ALLEN, SR.,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Loretta C. Biggs, District Judge. (1:17-cr-00157-LCB-1)

Submitted: August 16, 2018

Decided: August 20, 2018

Before WYNN and DIAZ, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Kearns Davis, Daniel D. Adams, BROOKS PIERCE MCLENDON HUMPHREY & LEONARD LLP, Greensboro, North Carolina, for Appellant. Matthew G.T. Martin, United States Attorney, Kyle D. Pousson, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick Michael Allen, Sr., appeals his conviction for possessing a firearm while subject to a court restraining order, in violation of 18 U.S.C. § 922(g)(8) (2012). On appeal, Allen contends that the district court erred in failing to instruct the jury that in order to be convicted, Allen must have known he was subject to a court order at the time he possessed a firearm. Our precedent confirms that the Government was required only to establish that Allen knowingly possessed the firearm, not that he knew of his prohibited status. *United States v. Langley*, 62 F.3d 602, 606 (4th Cir. 1995) (en banc); *see also United States v. Mitchell*, 209 F.3d 319, 322 (4th Cir. 2000) (noting that knowledge requirement stated in *Langley* and *Bryan v. United States*, 524 U.S. 184 (1998), “has been applied without exception by this and other circuits when interpreting § 924(a)(2)’s application to subsection (g) firearm possession crimes”). Although Allen urges us to overturn the decision in *Langley*, “[t]his panel of the court is bound by [an] en banc decision . . . unless it is later supplanted by an en banc decision by this court or by a subsequent decision of the United States Supreme Court.” *Ross v. Reed*, 704 F.2d 705, 707 (4th Cir. 1983).

Accordingly, we affirm the district court’s judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: August 20, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4762
(1:17-cr-00157-LCB-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DERRICK MICHAEL ALLEN, SR.

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Appeal: 17-4762 Doc: 49 Filed: 09/18/2018 Pg: 1 of 1

FILED: September 18, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4762
(1:17-cr-00157-LCB-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DERRICK MICHAEL ALLEN, SR.

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

United States District Court

Middle District of North Carolina

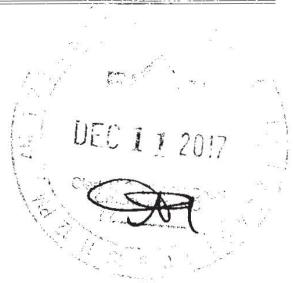
UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

DERRICK MICHAEL ALLEN, SR

Case Number: 1:17-CR-00157-1
USM Number: 33824-057



James Edward Quander

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s)
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count 2 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:922(g)(8) and 924(a)(2)	Possession of a firearm while being subject to a court order	February 23, 2017	2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count 1 on June 22, 2017.
- Count(s) □s □are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the economic circumstances.

November 28, 2017
Date of Imposition of Judgment

Signature of Judge

Loretta C. Biggs, United States District Judge
Name & Title of Judge

December 7, 2017
Date

DEFENDANT: DERRICK MICHAEL ALLEN, SR
CASE NUMBER: 1:17-CR-00157-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **24 months.**

- The court makes the following recommendations to the Bureau of Prisons: **the Defendant be designated to a facility where he will receive vocation training and be as close aspossible to his child in Durham, North Carolina.**
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district.
 - at _____ am/pm on _____.
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 pm on .
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____
_____, with a certified copy of this judgment.

UNITED STATES MARSHAL

BY _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DERRICK MICHAEL ALLEN, SR
CASE NUMBER: 1:17-CR-00157-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **three (3) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
4. You must make restitution in accordance with 18 U.S.C §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(Check, if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(Check, if applicable.)*
7. You must participate in an approved program for domestic violence. *(Check, if applicable.)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: DERRICK MICHAEL ALLEN, SR
CASE NUMBER: 1:17-CR-00157-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: DERRICK MICHAEL ALLEN, SR
CASE NUMBER: 1:17-CR-00157-1

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall cooperatively participate in a mental health treatment program, which may include inpatient treatment, and pay for treatment services, as directed by the probation officer.
2. The defendant shall submit his person, residence, office, vehicle, or any property under his control to a warrantless search. Such a search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.
3. The defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer.
4. The defendant shall provide any requested financial information to the probation officer.
5. The defendant shall support his dependents.

DEFENDANT: DERRICK MICHAEL ALLEN, SR
CASE NUMBER: 1:17-CR-00157-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00		\$0.00	\$0.00

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived pursuant to 18 U.S.C. Section 3612(f)(3) for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DERRICK MICHAEL ALLEN, SR
CASE NUMBER: 1:17-CR-00157-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g. weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g. weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

To the extent the defendant cannot immediately comply, the Court will recommend that the defendant participate in the Inmate Financial Responsibility Program.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk of Court, United States District Court for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401-2544, unless otherwise directed by the court, the probation officer, or the United States Attorney. Nothing herein shall prohibit the United States Attorney from pursuing collection of outstanding criminal monetary penalties.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names, Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment; (2) restitution principal; (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

18 U.S.C. § 922. Unlawful acts

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who

lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless—

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;¹

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

¹ So in original. Probably should be followed with “and”.

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

“Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are

Signature _____ Date _____.”

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the

statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who² has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in

² So in original. The word "who" probably should not appear.

reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

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 or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection—

(A) the term “firearm” does not include the frame or receiver of any such weapon;

(B) the term “major component” means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term “Security Exemplar” means an object, to be fabricated at the direction of the Attorney General, that is—

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors:

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which—

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q)(1) The Congress finds and declares that—

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary³ the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm—

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a

³ So in original. Probably should be followed by “of”.

license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is—

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being

particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless—

(A) after the most recent proposal of such transfer by the transferee—

(i) the transferor has—

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)(i) the transferee has presented to the transferor a permit that—

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)⁴) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee—

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who—

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1

⁴ See References in Text note below.

business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

- (A) the chief law enforcement officer of the place of business of the transferor; and
- (B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term “chief law enforcement officer” means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

(B)(i) the system provides the licensee with a unique identification number; or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall—

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

(A)(i) such other person has presented to the licensee a permit that—

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than \$5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

[(v), (w) Repealed. Pub. L. 103–322, title XI, §110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to—

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) Provisions Relating to Aliens Admitted Under Nonimmigrant Visas.—

(1) Definitions.—In this subsection—

(A) the term “alien” has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(B) the term “nonimmigrant visa” has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) Exceptions.—Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is—

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is—

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) Waiver.—

(A) Conditions for waiver.—Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if—

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) Petition.—Each petition under subparagraph (B) shall—

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) Approval of petition.—The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner—

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

(z) Secure Gun Storage or Safety Device.—

(1) In general.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

(2) Exceptions.—Paragraph (1) shall not apply to—

(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) Liability for use.—

(A) In general.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) Prospective actions.—A qualified civil liability action may not be brought in any Federal or State court.

(C) Defined term.—As used in this paragraph, the term “qualified civil liability action”—

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

18 U.S.C. § 924. Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or

(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922,

shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

- (i) be sentenced to a term of imprisonment of not less than 5 years;
- (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
- (iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

- (i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or
- (ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall—

- (i) be sentenced to a term of imprisonment of not less than 25 years; and
- (ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

- (i) a court shall not place on probation any person convicted of a violation of this subsection; and
- (ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term “drug trafficking crime” means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term “crime of violence” means an offense that is a felony and—

- (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term “brandish” means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition

would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term “serious drug offense” means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term “conviction” includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(k) A person who, with intent to engage in or to promote conduct that—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),
smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(l) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(o) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) Penalties Relating To Secure Gun Storage or Safety Device.—

(1) In general.—

(A) Suspension or revocation of license; civil penalties.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

(ii) subject the licensee to a civil penalty in an amount equal to not more than \$2,500.

(B) Review.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

(2) Administrative remedies.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



UNITED STATES OF AMERICA :
:
v. : 1:17CR157-1
:
DERRICK MICHAEL ALLEN, SR. :

The Grand Jury charges:

COUNT ONE

On or about February 23, 2017, in the County of Durham, in the Middle District of North Carolina, DERRICK MICHAEL ALLEN, SR., in connection with the acquisition of a firearm, that is, a Colt 5.56 caliber rifle, from a licensed dealer in firearms, that is, National Jewelry and Pawn, 3407 North Roxboro Street, Durham, North Carolina, knowingly made a false and fictitious written statement likely to deceive such dealer with respect to facts material to the lawfulness of the sale and other disposition of such a firearm, pursuant to Chapter 44, Title 18, United States Code; in that DERRICK MICHAEL ALLEN, SR., certified on an ATF Form 4473, Firearms Transaction Record, in response to question 11(h): "Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner?" to which he provided an answer of

“No,” when in truth and in fact, as DERRICK MICHAEL ALLEN, SR., then well knew, he was subject to a court order restraining him from harassing, stalking, or threatening an intimate partner; in violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

COUNT TWO

On or about February 23, 2017, in the County of Durham, in the Middle District of North Carolina, DERRICK MICHAEL ALLEN, SR., who was subject to a court order issued by the General Court of Justice, District Court Division, County of Durham, on August 9, 2016, docket number 16CVD3357, and effective for one year from that date; which was issued after a hearing of which DERRICK MICHAEL ALLEN, SR., received actual notice, and at which he had an opportunity to participate; which restrained DERRICK MICHAEL ALLEN, SR., from harassing, stalking, or threatening an intimate partner; and which included a finding that DERRICK MICHAEL ALLEN, SR., represented a credible threat to the physical safety of the intimate partner, that by its terms explicitly prohibited the use, attempted use, or threatened use of physical force against such intimate partner that would reasonably be expected to cause bodily injury, knowingly did possess in commerce and affecting commerce a

firearm, that is, a Colt 5.56 caliber rifle; in violation of Title 18, United States Code, Sections 922(g)(8) and 924(a)(2).

DATED: April 24, 2017

SANDRA J. HAIRSTON
Acting United States Attorney



BY: KYLE D. POUSSON
Assistant United States Attorney

A TRUE BILL:

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA * Case No. 1:17CR157-1
*
vs. * Winston-Salem, North Carolina
* June 20, 2017
DERRICK MICHAEL ALLEN, SR., * 9:30 a.m.
*
Defendant. *

TRANSCRIPT OF TRIAL - VOLUME 1 OF 3
BEFORE THE HONORABLE LORETTA C. BIGGS,
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Government: KYLE D. POUSSON, ESQUIRE
Office of United States Attorney
101 S. Edgeworth Street, 4th Floor
Greensboro, North Carolina 27401

For the Defendant: JOHN A. DUSENBURY, JR., ESQUIRE
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Greensboro, North Carolina 27401

Court Reporter: Lori Russell, RMR, CRR
P.O. Box 20593
Winston-Salem, North Carolina 27120

Proceedings recorded by stenotype reporter.
Transcript produced by Computer-Aided Transcription.

* * *

SMITH - DIRECT

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1 February 23rd of this year?

2 A. Yes, I was.

3 Q. On that occasion, were you assigned to a particular store?

4 A. My store is Roxboro. That's the store I work at
5 permanently.

6 Q. And in what city is that store located?

7 A. Durham, North Carolina.

8 Q. Does that location sell firearms?

9 A. They do.

10 Q. And could you -- and does that store have a federal
11 firearms license in order to sell those?

12 A. Yes, they do.

13 Q. Could you describe the -- actually, if I could withdraw
14 that. Are the guns kept in a particular area of the store?

15 A. We have a room that is blocked off with a security camera
16 system and locked. It is a gun room that we keep all our
17 firearms in unloaded in the store in the back of the store.

18 Q. Are other items sold out of that room?

19 A. Not that room, just guns and gun accessories.

20 Q. Inside that -- are customers allowed in that room?

21 A. Yes, they are, but they have to be escorted into the room
22 by an employee.

23 Q. And if escorted there by an employee, are customers allowed
24 to -- potential customers allowed to handle firearms inside
25 that room?

1 A. Yes, they are.

2 Q. Does the store -- does your store sell ammunition?

3 A. No, we don't.

4 Q. Now, on February 23rd of 2017, did you have occasion to
5 assist a customer by the name of Derrick Michael Allen, Sr.?

6 A. Yes, I did.

7 Q. Do you see that individual here in the courtroom today?

8 A. He's sitting at that table right there.

9 Q. If you could describe an article of clothing the individual
10 you have identified is wearing.

11 A. He's wearing a red shirt.

12 **MR. POUSSON:** Your Honor, if the record could reflect
13 the Defendant has been identified.

14 **THE COURT:** Yes.

15 **MR. POUSSON:** Thank you, Your Honor.

16 **BY MR. POUSSON:**

17 Q. At the time that you came into contact with Mr. Allen,
18 where were you in the store?

19 A. I had just walked onto the sales floor.

20 Q. While you were assisting Mr. Allen, did he enter the gun
21 room?

22 A. He asked to take a look at a gun, so we escorted him into
23 the gun room.

24 Q. What happened inside the gun room?

25 A. In the gun room, he was looking at high-powered rifles,

1 wanted to buy one and take it home with him that day.

2 Q. When you say "high-powered rifles," is that a term that
3 you're using to describe the firearms or is that a term that he
4 used to describe the firearms?

5 A. That's a general term of a lot of people, but it's an AR
6 rifle.

7 Q. What was Mr. Allen asking for when he came into the store
8 that day?

9 A. He wanted a gun, and he wanted to get one quickly and buy
10 one, and he was looking only at rifles. I didn't show him any
11 other type of gun, where we have pistols and shotguns and
12 hunting rifles.

13 Q. Did Mr. Allen ask to see any of the firearms -- any of the
14 rifles?

15 A. Yes, he did.

16 Q. Did you show him any of the firearms?

17 A. Yes. I showed him a Colt M4, I believe.

18 Q. Could you describe -- what is a Colt M4?

19 A. It is a semiautomatic rifle that shoots 5.56 rounds, as
20 well as 2.23s. The particular one that he had I believe had a
21 scope on it with a sling attached to it. So, you know, it just
22 had a couple different attachments that people, you know, put
23 on and customize on the guns -- those type of guns.

24 Q. You said he looked at rifles. Does the store sell other
25 type of firearms?

1 A. Yes, we sell handguns, shotguns, and accessories, so, you
2 know, pistols, handguns, hunting rifles, and shotguns between
3 calibers of 20 gauge to 12 gauge to 16 gauge.

4 Q. And did Mr. Allen show interest in any other type of
5 firearm other than rifles?

6 A. No, he did not.

7 Q. Did Mr. Allen indicate to you how he intended to pay for
8 the firearm in question?

9 A. With cash.

10 Q. And at any point did you see that cash?

11 A. Yes. He pulled some out. In order to get the total for
12 the rifle -- you know, he asked what was the total of the
13 rifle. I told him after tax, and he pulled that cash out to go
14 ahead and pay for the rifle.

15 Q. What was the approximate cost of the firearm that Mr. Allen
16 was looking at that day?

17 A. Off the top of my head -- I don't have the exact figure,
18 but I would say a little over between eight to nine hundred, I
19 think.

20 Q. And did Mr. Allen show you cash in that amount?

21 A. Yes, he did.

22 Q. What was his demeanor with regard to the purchase?

23 **MR. DUSENBURY:** Object.

24 **THE COURT:** Basis?

25 **MR. DUSENBURY:** Calls for a conclusion, Your Honor.

* * *

SMITH - DIRECT

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1 Q. And does this form indicate an address where that
2 individual asserts that they live?

3 A. Yes, it asserts that he lives at 1011 Camden Avenue,
4 Apartment A, which is on his license as well.

5 Q. Did Mr. Allen fill out Question 11 on this form?

6 A. Yes, he did.

7 Q. And in doing so, were there several subquestions to
8 Question 11?

9 A. Yes, there were.

10 Q. Where would I look on the form to see those questions?

11 A. Right down below it there, 11.a. through h. Or actually a.
12 through i.

13 Q. And what was Mr. Allen's answer -- what was Question 11.h.?

14 A. The question asks: "Are you subject to a court order
15 restraining you from harassing, stalking, or threatening your
16 child or an intimate partner or child of such partner?"

17 Q. And is a box selected on this form?

18 A. The answer to the question is "No."

19 Q. Is this form signed by Mr. Allen?

20 A. Yes, it is.

21 Q. And where would I look on the form to see that signature?

22 A. On the back page right here. It says "Signature" and
23 "Certification Date" of his signature.

24 Q. Was there a date that was associated with that signature?

25 A. Yes. February the 23rd of 2017.

1 Q. Does this form indicate any information about the firearm
2 that Mr. Allen was attempting to purchase?

3 A. Yes. It's marked as "Long Gun," which is a rifle or a
4 shotgun.

5 Q. On which page of the form would I look to see that
6 information?

7 A. Once you get through page 4 and 5 -- it's actually on
8 page 3 of 6. The other pages are just disclaimers.

9 Q. And in looking at page 3, where on this page would I look
10 to see the description of the firearm Mr. Allen was attempting
11 to purchase?

12 A. At the top box right there is where we put the make, model,
13 the serial number, the type of gun that it is, and the caliber
14 of bullet that it shoots.

15 Q. And what was the make of the firearm Mr. Allen was
16 attempting to purchase?

17 A. A Colt.

18 Q. And what was the model?

19 A. It's an M4 carbine.

20 Q. Is the serial number listed?

21 A. That is correct.

22 Q. And what is that serial number?

23 A. LE295625.

24 Q. Does this form indicate -- have a place to -- for the store
25 to indicate whether or not it has a federal firearms license?

* * *

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1 from?

2 A. That is right at the entrance of the store.

3 Q. And relative to this picture, where is the gun room located
4 in the store?

5 A. If you just walk straight back -- I know you can't quite
6 see it, but if you walk straight all the way back, there's the
7 glass room where the guns are kept.

8 Q. And drawing your attention to Government's Exhibit No. 4,
9 what do these images depict?

10 A. I'm sorry. Number 4, these ones right here? These are him
11 inside the gun room looking at the gun and handling the gun,
12 looking at it for purchase.

13 Q. And drawing your attention to Government's Exhibit 4-1,
14 what is it that we're looking at?

15 A. That is him holding the gun and looking at it.

16 Q. And where on this image do we see -- when you say "him,"
17 who are you referring to?

18 A. Mr. Allen.

19 Q. And where on this image do we see Mr. Allen?

20 A. Right at -- that's inside the gun room.

21 Q. And the gun that you're describing, where would we look to
22 see that?

23 A. That is right here, right on the glass table.

24 Q. Did Mr. Allen ever take the firearm off of the counter?

25 A. Yes, he did.

1 Q. And do we see that in the video or still images?

2 A. You can see it in 4-002.

3 Q. Drawing your attention to that exhibit, what do we see
4 Mr. Allen doing in this exhibit?

5 A. He's holding the gun, taking it off the counter.

6 Q. Did Mr. Allen -- what did Mr. Allen do while he was holding
7 the gun? What did he do with it?

8 A. He looked at the gun. He unholster -- released the
9 magazine in the gun to make sure that the magazine caught into
10 the gun and that it would be properly loaded and functional.

11 Q. Drawing your attention to Government's Exhibit 4-3, what do
12 we see here?

13 A. That is me and him filling out the paperwork for the 4473.

14 Q. Was anyone else present or come through the gun room at the
15 time -- while you were dealing with Mr. Allen?

16 A. There were two other customers that were looking at
17 firearms that day.

18 Q. And drawing your attention to Government's Exhibit 4-5,
19 what is it we see here?

20 A. That's me and another employee behind the counter, and then
21 there's Mr. Allen looking at the gun, and then you can see the
22 arm of another customer.

23 Q. And drawing your attention to Exhibit 4-5, what do we see
24 in Exhibit 4-5?

25 A. That is me and Mr. Allen looking at the gun.

1 Q. And did Mr. Allen at any point take any pieces off of the
2 gun?

3 A. He just basically, like I said, unloaded the magazine,
4 checked that, put that in there. It looked like he had checked
5 it -- basically checking the equipment and handling it. There
6 wasn't too much you could take off the gun, but he did take out
7 the magazine.

8 Q. I'm drawing your attention to Government's Exhibit 4-6.
9 What do we see Mr. Allen doing here?

10 A. That one is a little bit -- but he's checking -- I can't
11 quite see with the glare on that one.

12 Q. And where in this image is the gun that we've been talking
13 about?

14 A. It's in his hand.

15 Q. And drawing your attention to 4-7, what do we see Mr. Allen
16 doing in this picture?

17 A. That is him looking down the sights of the gun.

18 Q. Now, once an individual has filled out a 4473, does the
19 store go through any steps prior to completing the sale?

20 A. I'm sorry. Could you repeat the question?

21 Q. Does the store go through any steps prior to completing the
22 sale once an individual has filled out the 4473?

23 A. Once the 4473 is filled out, we have two options. We can
24 call in to the ATF and see if we can get the approval right
25 there for the firearm or we can do it online. We have two

1 associates who can go online and check it -- check the 4473
2 approval process online.

3 Q. And did the store attempt to go through the approval
4 process with regard to the form that Mr. Allen had filled out?

5 A. Yes, we did.

6 Q. When you send in that form for approval, what types of
7 responses can you get?

8 A. You get three responses. There's proceed, delay, and deny.

9 Q. And what was the response with Mr. Allen's form?

10 A. He was denied.

11 Q. And as a result, did you complete the sale with Mr. Allen
12 that day?

13 A. No, we did not.

14 Q. And did you allow him to leave the store with a firearm
15 that day?

16 A. No, we did not.

17 Q. If I could draw your attention back to the screen.

18 **MR. POUSSON:** Your Honor, I would ask permission to
19 publish the store surveillance video previously introduced as
20 Government's Exhibit 2.

21 **THE COURT:** You may.

22 (Pause in the proceedings.)

23 **MR. POUSSON:** Your Honor, I am up on the system. For
24 some reason I don't see it coming on the screen. May I have
25 just a moment?

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA * Case No. 1:17CR157-1
*
vs. * Winston-Salem, North Carolina
* June 21, 2017
DERRICK MICHAEL ALLEN, SR., * 9:15 a.m.
*
Defendant. *

TRANSCRIPT OF TRIAL - VOLUME 2 OF 3
BEFORE THE HONORABLE LORETTA C. BIGGS,
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Government: KYLE D. POUSSON, ESQUIRE
Office of United States Attorney
101 S. Edgeworth Street, 4th Floor
Greensboro, North Carolina 27401

For the Defendant: JOHN A. DUSENBURY, JR., ESQUIRE
Office of Federal Public Defender
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Greensboro, North Carolina 27401

Court Reporter: Lori Russell, RMR, CRR
P.O. Box 20593
Winston-Salem, North Carolina 27120

Proceedings recorded by stenotype reporter.
Transcript produced by Computer-Aided Transcription.

* * *

TAYLOR - DIRECT

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1 depicted in the top left window?

2 A. Judge Evans.

3 Q. And do you know what type of judge Judge Evans is?

4 A. A district judge.

5 Q. And in looking at the top right screen of this image, what
6 is it that you see?

7 A. The jury -- the witness stand. I'm sorry.

8 Q. And looking at the bottom two screens, what do the bottom
9 two screens depict?

10 A. Ms. Davis in one corner and Mr. Allen in the -- at the
11 witness -- testifying.

12 Q. And were you present in court for this hearing?

13 A. Yes, I was.

14 Q. And did you during this hearing have an occasion to observe
15 an individual by the name of Derrick Michael Allen, Sr.?

16 A. Yes.

17 Q. Do you see that individual here in the courtroom today?

18 A. Yes, I do.

19 Q. Would you point him out for the Court and describe a piece
20 of clothing that he's wearing?

21 A. He's wearing a copper-brown shirt right there.

22 **MR. POUSSON:** Your Honor, if the record could reflect
23 the Defendant has been identified.

24 **THE COURT:** Yes.

25 **MR. POUSSON:** Thank you.

* * *

* * *

TAYLOR - DIRECT

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1 A. At the time of the hearing.

2 Q. And were you given copies of those orders at the hearings?

3 A. Yes, I was.

4 Q. And what was your practice with those orders? What did you
5 do with them?

6 A. I time stamp -- date -- time clocked the top of them and
7 put my initials and the time.

8 Q. And were copies of those orders provided to anybody?

9 A. On this particular day, I believe Mr. Allen exited the
10 courtroom before the judge made her ruling. So Ms. Davis was
11 provided with one, but Mr. Allen was not provided with one
12 because he left the courtroom.

13 Q. Was it your typical practice to provide both parties with
14 copies of any order the judge had gave?

15 A. Yes, when they're in the courtroom.

16 Q. And did that -- did you give the parties those copies at
17 the end of every hearing?

18 A. Yes, when they're -- yes.

19 Q. And on this date, do you remember whether Mr. Allen -- you
20 gave Mr. Allen a copy of the order?

21 A. No.

22 Q. And why did you not give him a copy of the order?

23 A. He left the courtroom before the judge finished her ruling.

24 Q. And do you know why Mr. Allen left the courtroom?

25 **MR. DUSENBURY:** Object.

* * *

* * *

TAYLOR - DIRECT

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1 Q. And did Judge Evans issue an order at the conclusion of
2 this hearing?

3 A. Yes, she did.

4 Q. Did she memorialize her order in writing?

5 A. Yes, she did.

6 Q. And drawing your attention to Government's Exhibit No. 15,
7 what is it -- do you recognize Government's Exhibit No. 15?

8 A. Yes, I do.

9 Q. And what is the Government's Exhibit No. 15?

10 A. "Domestic Violence Order Of Protection."

11 Q. And is this Domestic Violence Order of Protection that's
12 Government's Exhibit No. 15 the order that Judge Evans issued
13 on August 9th, 2016, after the hearing that we've just been
14 discussing?

15 A. Yes, it is.

16 **MR. POUSSON:** Your Honor, I would move to introduce
17 Government's Exhibit No. 15.

18 **MR. DUSENBURY:** No objection.

19 **THE COURT:** Allowed.

20 **MR. POUSSON:** Your Honor, I would move to publish
21 Government's 15 to the jury.

22 **THE COURT:** You may do so.

23 **BY MR. POUSSON:**

24 Q. Ms. Taylor, I'm drawing your attention to the screen next
25 to you. Do you see the title of the document in this case?

* * *

• • •

1 A. As far as the firearms and ammunition?

2 Q. Yes, ma'am.

3 A. I don't know if she -- I don't recall that.

4 Q. I see. I see. So she may or may not have done that?

5 A. Correct.

6 Q. All right. And did she also announce the duration of that
7 order?

8 A. Yes.

9 Q. But is it your testimony that at the time she made those
10 announcements Mr. Allen was not physically present?

11 A. If I recall correctly, I believe this is the hearing that
12 he walked out of, if I recall correctly, because I have seen
13 him on another hearing in a different situation so -- with him
14 present. So I'm not -- I know he has walked out of a hearing,
15 so I'm thinking this is the hearing that he walked out of and
16 he did not hear the complete ruling and that's why he didn't
17 receive a copy of the order.

18 Q. I see. And is it your belief that he would not have heard,
19 say, the judge's announcement regarding the duration of the
20 order?

21 A. Not if -- if he was not present, no, he wouldn't.

22 Q. All right. Thank you.

23 MR. DUSENBURY: Those are all my questions.

25 || **MR. POUSSON:** If I could briefly.

REDIRECT EXAMINATION

1 **BY MR. POUSSON:**

3 Q. Just a moment ago you indicated that as to the hearing that
4 Mr. Allen did walk out of you weren't sure he heard the entire
5 order. For the hearing that he walked out of, had the judge
6 started to rule at the point that he walked out?

7 A. I believe at the time that he left the courtroom it was the
8 judge explaining to them what needs to be best for the child
9 and that she said she was going to give her the protective
10 order, and that's when he started to gather his things and
11 leave. So he didn't hear the complete ruling.

12 Q. So at the time that he left, is it your testimony the judge
13 had already said that she would grant the protective order?

14 A. Yes.

15 Q. It's simply that he left before she said all of the things
16 that were included in the order?

17 A. Correct.

18 Q. Is a copy of this protective order kept in the files of the
19 Durham County Clerk?

20 A. Yes, it is.

21 Q. And is that file available for individuals -- well, parties
22 to the case to receive copies?

23 A. Yes, it is.

24 Q. Had Mr. Allen come to the Clerk of Court, would he have
25 been allowed to have a copy of the order?

* * *

* * *

D. ALLEN - DIRECT

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1 A. I've graduated from Durham Tech Community College with two
2 certifications as a -- one as a construction electrician and
3 one as a maintenance electrician.

4 Q. And that's with a view toward doing what?

5 A. Working in the electrical field. Well, ultimately I wanted
6 to -- I wanted to get my associate's degree.

7 Q. All right. Have you taken any more classes?

8 A. I was supposed to graduate this past May with a
9 certification as a control electrician.

10 Q. Graduate from where?

11 A. Durham Tech Community College.

12 Q. When were you enrolled in Durham Tech most recently?

13 A. 2000 -- 2017.

14 Q. So were you enrolled in Durham Tech on February the 23rd of
15 2017?

16 A. Yeah.

17 Q. Now, on that day, on the 23rd of February of this year,
18 what did you do when you went to National pawnshop?

19 A. I went to the pawnshop in hopes of getting a gun.

20 Q. So when -- when you walked in the store, what did you do?

21 A. I went to the -- I walked directly to the gun room.

22 Q. All right. Was that a locked room?

23 A. No.

24 Q. It wasn't locked?

25 A. No.

1 Q. So you heard Chris Smith testify yesterday, did you not?

2 A. Yes.

3 Q. Did you hear him say that room was locked?

4 A. I remember -- yeah, I remember.

5 Q. Do you remember him saying that?

6 A. I vaguely remember his response, but I remember the
7 question being posed.

8 Q. All right. But your recollection is on that day you were
9 able to enter the room?

10 A. Yeah.

11 Q. Did someone have to open the door for you or --

12 A. No.

13 Q. All right. When you entered the room, what happened?

14 A. Chris was attending to a couple, so I stepped off to the
15 side and just waited until, you know, he came to me. And once
16 he finished, you know, dealing with those customers and
17 whatnot, I told him what I wanted and he showed me.

18 Q. And when you told him what you wanted, what did you say you
19 wanted?

20 A. I don't exactly remember the first gun that I asked for,
21 but I know eventually he ended up showing me I think it was a
22 Colt 4 -- something -- a Colt something and that was that.

23 Q. Did you say anything to him about why you wanted the gun?

24 A. No.

25 Q. He hands you the gun and then what do you do?

1 A. I examined it.

2 Q. And by examining it, specifically what did you do?

3 A. Just checked it out.

4 Q. And did you give it back to him?

5 A. I did. I set it on the counter.

6 Q. And at some point did you tell him that that was the gun
7 that you would -- that you had selected?

8 A. Yeah.

9 Q. Now, when you did that, did you recall the protective order
10 that had been entered six months earlier?

11 A. I forgot about it.

12 Q. When Mr. Smith brought up the question of the Form 4473
13 that would need to be completed to conclude the purchase, do
14 you recall that?

15 A. Yeah.

16 Q. And did he hand you that form?

17 A. Yes.

18 Q. And did that occur inside the gun room or outside the gun
19 room?

20 A. I believe it was inside the gun room initially.

21 Q. All right.

22 A. From the outset.

23 Q. And when he handed it to you inside the gun room, what did
24 you do with that form?

25 A. I began to fill it out. I filled it out.

* * *

1 Q. Going back to the Form 4473, when you got to Question
2 11.h., the question that, of course, we're here about, why did
3 you give -- provide a negative answer to that question?

4 A. I completely forgot about the -- I mean attending the -- at
5 that particular time, I had forgot about it. It's
6 mind-boggling that I forgot about it, but I forgot about it. I
7 had a lapse of memory. I apologize for that.

8 **MR. DUSENBURY:** Your Honor, I think those are all my
9 questions.

10 **THE COURT:** All right. Mr. Pousson.

11 **MR. POUSSON:** Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 **BY MR. POUSSON:**

14 Q. Good afternoon, Mr. Allen.

15 A. How you doing?

16 Q. As you testified, you are Derrick Michael Allen, Sr.?

17 A. I am.

18 Q. And you are the individual that we saw on the surveillance
19 footage entering the National Jewelry and Pawn on
20 February 23rd?

21 A. I am.

22 Q. And you went into the store intending to buy a firearm?

23 A. Yes.

24 Q. And you -- in your testimony, you talked about the fact
25 that when you entered you went to the gun room; is that right?

* * *

* * *

D. ALLEN - CROSS

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1 that you were confused about whether or not you and Ms. Davis
2 were an intimate partner?

3 A. Well, as -- as I previously -- as I said is that I didn't
4 know that just because we had a child in common that
5 constitutes us as being intimate.

6 Q. Okay. So your testimony is that you remembered the order,
7 but you didn't think that she was an intimate partner?

8 A. No, no, no. I forgot it. You know, at the time of the --
9 at the time that I was answering those questions, I had forgot
10 about it; but, you know, thinking back on it, you know, it was
11 a three-part question. It was ambiguous. You know, so if I
12 just identify with the first question of, you know, "Do you
13 have a restraining order? Are you" -- how -- how did -- how
14 did they ask the question? If there's a restraining order
15 keeping you from your son. I don't have a restraining order
16 keeping me from my son.

17 Q. Mr. Allen, on February 23rd, 2017, was a domestic violence
18 protective order in effect and were you the subject of that
19 order?

20 A. At that particular time, I had forgot about the domestic
21 violence protective order. There is a custody order that's in
22 place.

23 Q. So -- I'm sorry.

24 A. My son --

25 Q. I didn't understand whether or not you answered that. Was

1 there an order in place at that time?

2 A. Was there an order in place?

3 Q. Yes.

4 A. There was an order in place, but as I said, I forgot about
5 it. There's a -- there's a -- there -- I'm allowed -- there's
6 a visitation order that's in effect. I'm allowed to see my son
7 twice a week. That's Mondays and Wednesdays. We went about
8 everything, you know, on a -- I mean, nothing changed. You
9 know, once she -- once -- once the domestic violence order came
10 into effect or once they granted the domestic violence order,
11 we went about life as nothing -- you know, like it wasn't
12 there.

13 Q. Mr. Allen, drawing your attention to the screen next to
14 you, I'm bringing up what's been previously introduced as
15 Government's Exhibit No. 5. Mr. Allen, this is the form that
16 you filled out -- the 4473 that you filled out on
17 February 23rd?

18 A. Yeah.

19 Q. This is your name at the top?

20 A. It is.

21 Q. And you filled this form out?

22 A. Yeah.

23 Q. In looking at Question 11.h., what is Question 11.h.?

24 A. Are you -- are you subject -- "are you subject to a court
25 order restraining you from harassing, stalking or threatening

1 your child or an intimate partner of a child of such partner?"

2 Q. And is it your testimony that you did not understand the
3 phrase "intimate partner"?

4 A. It's my testimony that I forgot.

5 Q. In drawing your attention to the fifth page of this
6 document, are there instructions -- there are instructions on
7 the form that you were given that define an intimate partner,
8 are there not?

9 A. I didn't read this at the pawnshop.

10 Q. Mr. Allen, drawing your attention back to the second page
11 of the document, did you sign this document?

12 A. Yeah, I signed that document.

13 Q. And that is your signature on the screen?

14 A. Yeah, it is.

15 Q. And in doing -- in so signing, you were certifying that
16 your answers were true, complete, and correct; is that correct?

17 A. Correct. But I didn't read the back of the...

18 Q. And just above your signature also provided warning that if
19 you answer that you are under -- subject to an order that you
20 would not be allowed to have a firearm; isn't that true?

21 (Pause in the proceedings.)

22 A. Yeah.

23 Q. Mr. Allen, while you were in the store that day, you
24 handled a Colt M4 rifle, didn't you?

25 A. I did.

1 Q. The clerk passed the rifle to you?

2 A. Right.

3 Q. And you spent some time holding it?

4 A. Yeah, examining it.

5 Q. Examining it. You put it to your shoulder, didn't you?

6 A. Yes.

7 Q. You took the magazine out of the gun, didn't you?

8 A. (Nods head.)

9 Q. And you testified just a moment ago that you gave the rifle
10 back to the clerk, didn't you?

11 A. I said -- that's one of two things that I said. I said
12 that and I said I set it down on the counter.

13 Q. Okay. You had it and then you gave it back. Is that a
14 fair characterization of what you were saying?

15 A. Well, from the video footage, I recall setting it back on
16 the counter.

17 Q. Mr. Allen, let's talk just a little bit about the order
18 that we've been discussing. You received notice of a hearing
19 back in 2016 about a domestic violence protective order, didn't
20 you?

21 A. I received an order?

22 Q. You received notice that there was going to be a hearing,
23 didn't you?

24 A. Notice. Yeah, I think -- yeah, I believe so.

25 Q. Two deputies from the Durham County Sheriff's Department

* * *

JURY INSTRUCTIONS

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1 of the sale or disposition of the firearm.

2 And number 4, the statement was intended to deceive or
3 likely to deceive a firearms dealer.

4 Before Mr. Allen may be found guilty, you must agree
5 unanimously upon each of the elements as I have described them
6 to you.

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

10 The word "knowingly," as the term is used throughout these
11 instructions, means that the act was done voluntarily and
12 intentionally and not because of a mistake or accident. In
13 this context, it means that Mr. Allen was aware that he was
14 making a false statement in connection with the acquisition of
15 a firearm.

16 A false statement is likely to deceive if considering all
17 the surrounding circumstances at the time it was made a
18 reasonable person of ordinary prudence would have been deceived
19 or misled.

20 A statement used in connection with a firearm acquisition
21 is material if it has a natural tendency to influence or is
22 capable of influencing a decision or action of the licensed
23 firearms dealer.

24 That is Count One.

25 Count Two of the indictment reads as followed: On or about

1 February 23rd, 2017, in the County of Durham, in the Middle
2 District of North Carolina, Derrick Michael Allen, Sr., who was
3 subject to a court order issued by the General Court of
4 Justice, District Court Division, County of Durham, on August
5 9, 2016, docket number 16-CvD-3357, and effective for one year
6 from that date; which was issued after a hearing of which
7 Derrick Michael Allen, Sr., received actual notice, and at
8 which he had an opportunity to participate; which restrained
9 Derrick Michael Allen from harassing, stalking, or threatening
10 an intimate partner; and which included a finding that Derrick
11 Michael Allen, Sr., represented a credible threat to the
12 safety -- to the physical safety of the intimate partner, that
13 by its terms explicitly prohibited the use, attempted use, or
14 threatened use of force against such intimate partner that
15 would reasonably be expected to cause bodily injury, knowingly
16 did possess in commerce and affecting commerce a firearm, that
17 is, a Colt 5.56 caliber rifle. This in violation of Title 18
18 of United States Code, Sections 922(g)(8) and 924(a)(2).

19 Now, as I mentioned and I want to remind you, the
20 indictment is a charge. It is not evidence of guilt. What you
21 must determine is whether the Government has proved each of the
22 following elements beyond a reasonable doubt:

23 First, that on or about February 23rd, 2017, in Durham
24 County, Mr. Allen knowingly possessed a firearm, that is, a
25 Colt 5.56 caliber rifle.

1 Number 2, that the firearm was in or affecting interstate
2 commerce. That is at some point prior to Mr. Allen's
3 possession of the firearm it traveled from one state to another
4 or from a foreign country to the United States.

5 Third, that such possession occurred at a time when
6 Mr. Allen was subject to a qualifying court order; that is,
7 number one, the order was issued after a hearing of which
8 Mr. Allen received actual notice and at which Mr. Allen had an
9 opportunity to participate; number two, the order restrains
10 Mr. Allen from harassing, stalking, or threatening an intimate
11 partner or child of such intimate partner or person or engaging
12 in other conduct that would place an intimate partner in
13 reasonable fear of bodily injury to the partner or child; and,
14 three, the order includes a finding that Mr. Allen represents a
15 credible threat to the physical safety of such intimate partner
16 or child or by its terms explicitly prohibits the use,
17 attempted use, or threatened use of physical force against such
18 intimate partner or child that would reasonably be expected to
19 cause bodily injury.

20 Before Mr. Allen can be found guilty, you must agree
21 unanimously upon each of these elements as I have described
22 them to you.

23 The word "knowingly," as the term is used, means that the
24 act was done voluntarily and intentionally and not because of
25 mistake or accident. In this context, it means that Mr. Allen

1 was aware that the item he is charged with possessing was
2 indeed a firearm as the term has been explained to you, and
3 that his possession of the item was intentional and voluntary.

4 The term "intimate partner" means, with respect to a
5 person, the spouse of a person, a former spouse of the person,
6 an individual who is a parent of a child of that person, and an
7 individual who cohabitates or has cohabitated with that person.
8 It is not necessary for the Government to prove that Mr. Allen
9 knew that he was prohibited from possessing a firearm. Rather,
10 ignorance of the law is not a defense to this charge.

11 I will now define "possession" as used in these
12 instructions. The law recognizes several kinds of possession.
13 A person may have actual possession or constructive possession.
14 A person may also have sole or joint possession.

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

21 To prove constructive possession, the Government must prove
22 beyond a reasonable doubt that Mr. Allen knowingly and
23 intentionally exercised dominion and control over the firearm
24 or that he had the power and the intention to exercise dominion
25 and control over the firearm. Constructive possession must

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA)
)
 v.)
)
 DERRICK MICHAEL ALLEN, SR.)

1:17CR157-1



VERDICT

We, the jury, find the Defendant, DERRICK MICHAEL ALLEN, SR.,

Not Guilty
(Not Guilty or Guilty)

of the offense charged in Count One of the Indictment, that is, on or about February 23, 2017, in connection with the acquisition of a firearm, that is a Colt 5.56 caliber rifle, he knowingly made a false and fictitious written statement material to the lawfulness of the sale and other disposition of such firearm, in violation of Title 18, United States Code, Sections 922(a)(6) and 924(a)(2).

We, the jury, find the Defendant, DERRICK MICHAEL ALLEN, SR.,

Guilty
(Not Guilty or Guilty)

of the offense charged in Count Two of the Indictment, that is, on or about February 23, 2017, was subject to a court order issued on August 9, 2016, which issued after a hearing of which he received actual notice, knowingly did possess in commerce and affecting commerce

a firearm, that is, a Colt 5.56 caliber rifle; in violation of Title 18, United States Code, Sections 922(g)(8) and 924(a)(2).

Please sign and date the Verdict.



Frank Arthur Raymond
Foreperson

This, the 22 day of June, 2017