APPENDIX

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APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4451

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PATRICK TATE ADAMIAK,

Defendant - Appellant.

FIREARMS POLICY COALITION;
FPC ACTION FOUNDATION,

Amici Supporting Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L. Wright Allen, District Judge. (2:22-cr-00047-AWA-LRL-1)

Argued: September 12, 2025
Decided: October 14, 2025

Before AGEE, RICHARDSON and BERNER, Circuit Judges.

Affirmed in part and remanded with instructions by unpublished per curiam opinion.

ARGUED: Matthew Michael Larosiere, Lake Worth, Florida, for Appellant. Jacqueline Romy Bechara, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee. ON BRIEF: Jessica D. Aber, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee. Joseph G.S. Greenlee, GREENLEE LAW, PLLC, McCall, Idaho, for Amici Curiae.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

A jury found Defendant Patrick Tate Adamiak guilty of receiving and possessing an unregistered firearm, possessing and transferring a machinegun, and three counts of receiving and possessing an unregistered destructive device. The district court sentenced him to twenty years' imprisonment. On appeal, Adamiak contends that at least one of his convictions violated the Double Jeopardy Clause of the Fifth Amendment. He further objects to the adequacy of the indictment under which he was charged, the sufficiency of the evidence against him, the district court's jury instructions, and his sentence. Finally, Adamiak argues that his convictions violate the Second Amendment and that the statutes under which he was convicted are unconstitutionally vague. Only his Double Jeopardy argument succeeds. Having thoroughly reviewed the record and carefully considered the briefs, arguments,

and materials provided by the parties, we discern no other reversible error.

I. Analysis

We properly assert jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. We "review the district court's factual findings . . . for clear error, but we review its legal conclusions de novo." *United States v. Perry*, 757 F.3d 166, 171 (4th Cir. 2014) (quoting *United States v. Woolfolk*, 399 F.3d 590, 594 (4th Cir. 2005)). As for challenges to sufficiency of the evidence, "reversal . . . will be confined to cases where the prosecution's failure is clear," and no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Green*, 599 F.3d 360, 367 (4th Cir. 2010) (first quoting *Burks v. United States*, 437 U.S. 1, 17 (1978), then quoting *United States v. Madrigal–Valadez*, 561 F.3d 370, 374 (4th Cir. 2009)).

A. Double Jeopardy

We turn first to Adamiak's argument under the Fifth Amendment's Double Jeopardy Clause, which provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. The clause "prohibits the government from subjecting a person to 'multiple punishments for the same offense.'" *United States v. Schnittker*, 807 F.3d 77, 81 (4th Cir. 2015) (quoting *Ohio v. Johnson*, 467 U.S. 493, 498 (1984)). "To determine whether two offenses charged under separate statutes are the same offense, courts apply the *Blockburger* test." *United States v. Whitley*, 105 F.4th 672, 677 (4th Cir. 2024). "If each offense 'requires proof of a fact that the other does not, the *Blockburger* test is satisfied,' meaning the two offenses are not the same, 'notwithstanding a

substantial overlap in the proof offered to establish the crimes.'" *Id.* (citing *Brown v. Ohio*, 432 U.S. 161, 166 (1977)). This particular requirement of the Double Jeopardy Clause "ensure[s] that the sentencing discretion of courts is confined to the limits established by the legislature." *Johnson*, 467 U.S. at 499. It follows, then, that "cumulative sentences are not permitted" for convictions constituting the same offense "unless elsewhere specifically authorized by Congress." *Missouri v. Hunter*, 459 U.S. 359, 367 (1983) (emphasis omitted) (quoting *Whalen v. United States*, 445 U.S. 684, 693 (1980)).

Adamiak contends, and the Government concedes, that his convictions and consecutive sentences on Counts One and Two of the indictment, for possessing or receiving an unregistered firearm in violation of 18 U.S.C. § 5861(d) and possessing or transferring a machinegun in violation of 18 U.S.C. § 922(o), violate the Double Jeopardy Clause. We agree. As charged, the jury could convict Adamiak based on the same facts: knowing possession of a machinegun. *See United States v. Kuzma*, 967 F.3d 959, 977 (9th Cir. 2020). Thus, the Section 922(o) offense does not require proof of any fact that the Section 5861(d) offense does not. *See Whitley*, 105 F.4th at 677. Neither statute evinces a clear Congressional intent to authorize cumulative punishment. *See Missouri*, 459 U.S. at 366–67 (quoting *Whalen*, 445 U.S. at 691–92, 693); *Kuzma*, 967 F.3d at 977. They are thus "the same offense for double jeopardy purposes." *Whitley*, 105 F.4th at 678 (quoting *Currier v. Virginia*, 585 U.S. 493, 500 (2018)).

Because Adamiak's convictions and consecutive sentences on Counts One and Two violate his Fifth Amendment right, "the only remedy consistent with [ ] congressional intent is for the District Court, where

the sentencing responsibility resides, to exercise its discretion to vacate one of the underlying convictions." *Ball v. United States*, 470 U.S. 856, 864 (1985). We therefore remand with instructions to vacate Adamiak's conviction under either Count One or Count Two, and to resentence Adamiak in a manner consistent with this opinion.

B. Adequacy of the Indictment

We next turn to the adequacy of the indictment. "[A]n indictment must contain the elements of the offense charged, fairly inform a defendant of the charge, and enable the defendant to plead double jeopardy as a defense in a future prosecution for the same offense." *United States v. Barringer*, 25 F.4th 239, 246–47 (4th Cir. 2022) (quoting *United States v. Kingrea*, 573 F.3d 186, 191 (4th Cir. 2009)). "It is generally sufficient" for "an indictment [to] set forth the offense in the words of the statute itself." *Perry*, 757 F.3d at 171 (quoting *Hamling v. United States*, 418 U.S. 87, 117 (1974)). The indictment must also include "a statement of the facts and circumstances" necessary to inform the accused of the particular offense with which he is charged. *Id.* (quoting *Hamling*, 418 U.S. at 117–18).

Counts One, Three, Four, and Five allege violations of 26 U.S.C. § 5861(d), which criminalizes the unlawful possession of an unregistered firearm or destructive device. That statute makes it "unlawful for any person to" (1) "receive or possess" (2) "a firearm" (3) "which is not registered to him in the National Firearms Registration or Transfer record" with (4) knowledge that the features of the relevant firearm "brought it within the scope of the Act." 26 U.S.C. § 5861(d); *Staples v. United States*, 511 U.S. 600, 619 (1994). Count Two alleges unlawful possession and transfer of

a machinegun in violation of 18 U.S.C. § 922(o). That statute makes it unlawful for any person to (1) transfer or possess (2) a machinegun with (3) knowledge that the relevant weapon possessed characteristics that qualified it as a machinegun. 18 U.S.C. § 922(o); *Staples*, 511 U.S. at 619.

The indictment against Adamiak states each element of the relevant offenses. It further specifies which items within Adamiak's possession comprised the basis of the relevant offense. It lists a PPSH machinegun as the basis for the first two firearms counts. As to the remaining three counts, it lists a M79, 40mm grenade launcher, a M203, 40mm grenade launcher and two RPG-7 variant recoilless antitank projectors. This detail adequately informed Adamiak of the nature of the charges against him. To the extent he desired further specificity, he could have sought a bill of particulars. *United States v. Powers*, 40 F.4th 129, 136 (4th Cir. 2022) ("A defendant who needs evidentiary details beyond those provided in the indictment to prepare his defense may seek a bill of particulars"). He did not.

Adamiak further argues the indictment is deficient because it does not specify which statutory definition of "machinegun" or "destructive device" applies to the relevant item. There is no basis for this argument in the relevant case law, nor is such detail required to accord with the requirements and purpose of an indictment. *See United States v. Resendiz-Ponce*, 549 U.S. 102, 109–10 (2007).

C. Remaining Issues on Appeal

Adamiak's remaining arguments fare no better. He argues that the question of whether the items discovered in his home qualify as "machineguns" or

"destructive devices" is one of law that should not have been submitted to the jury. Not so. "[W]hile 'the judge must instruct the jury on the *law applicable* to the issues raised at trial . . . . [,] the next two steps are *strictly for the jury*: (1) determining the facts as to each element of the crime, and (2) applying the law as instructed by the judge to those facts.'" *United States v. Lindberg*, 39 F.4th 151, 160 (4th Cir. 2022) (quoting *United States v. Johnson*, 71 F.3d 139, 142 (4th Cir. 1995), *abrogated on other grounds by United States v. Medley*, 972 F.3d 399, 412 (4th Cir. 2020) (en banc)); *see also United States v. Ramirez-Castillo*, 748 F.3d 205, 213 (4th Cir. 2014) ("[T]he jury's constitutional responsibility is not merely to determine the facts, but to apply the law to those facts and draw the ultimate conclusion of guilt or innocence." (quoting *United States v. Gaudin*, 515 U.S. 506, 514 (1995)).

A thorough review of the record shows sufficient evidence for the jury to convict Adamiak of the charged offenses. The Government put forth the testimony of federal law enforcement agents involved in the investigation, a cooperating informant, an individual that interacted with Adamiak in a professional capacity as a firearms retailer, and several expert witnesses. "[A]ny rational trier of fact could have found the essential elements of the crime[s] beyond a reasonable doubt." *Coleman v. Johnson*, 566 U.S. 650, 654 (2012) (emphasis omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

Further, the jury instructions accurately stated the law. Adamiak's Second Amendment challenge is squarely foreclosed by this court's holdings in *Bianchi v. Brown*, 111 F.4th 438, 453 (4th Cir. 2024) and *United States v. Hunt*, 123 F.4th 697, 704 (4th Cir. 2024), and the relevant statutes are not unconstitutionally vague.

Finally, we conclude that the district court committed no error in sentencing.

II. Conclusion

For these reasons, we remand to the district court with instructions to vacate Adamiak's conviction on either Count One or Count Two, and to resentence accordingly. We otherwise affirm the district court in all other respects.

AFFIRMED IN PART AND REMANDED WITH INSTRUCTIONS

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Filed: November 12, 2025]

No. 23-4451
(2:22-cr-00047-AWA-LRL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

PATRICK TATE ADAMIAK

Defendant – Appellant

FIREARMS POLICY COALITION;
FPC ACTION FOUNDATION

Amici Supporting Appellant

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Richardson, and Judge Berner.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Criminal No. 2:22-cr-47

UNITED STATES OF AMERICA,

v.

PATRICK TATE ADAMIAK,

Defendant

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26 U.S.C. §§ 5841, 5845, 5861(d) and 5871
Receive and Possess an Unregistered Machinegun
or Destructive Device (Counts 1, 3-5)

18 U.S.C. § 922(o)
Unlawful Possession and
Transfer of a Machinegun (Count 2)

18 U.S.C. § 924(d); 26 U.S.C. § 5872
28 U.S.C. § 2461(c) Criminal Forfeiture

SUPERSEDING INDICTMENT

June 2022 Term at Norfolk

THE GRAND JURY CHARGES THAT:

COUNT ONE

(Receive and Possess an Unregistered Firearm)

On or about March 15, 2022, through on or about March 28, 2022, in Virginia Beach, within the Eastern District of Virginia, the defendant, PATRICK TATE ADAMIAK, did knowingly receive and possess a firearm, namely a PPSH machinegun, which was not registered to the defendant in the National Firearms Registration and Transfer Record, as required by 26 U.S.C. § 5841.

(In violation of 26 U.S.C. §§ 5841, 5845, 5861(d) and 5871)

THE GRAND JURY FURTHER CHARGES THAT:

COUNT TWO

(Unlawful Possession and Transfer of a Machinegun)

On or about March 15, 2022, through on or about March 28, 2022, in Virginia Beach, within the Eastern District of Virginia, the defendant, PATRICK TATE ADAMIAK, did knowingly possess and transfer a machinegun, that is a PPSH machinegun.

(In violation of 18 U.S.C. § 922(o))

THE GRAND JURY FURTHER CHARGES THAT:

COUNT THREE

(Receive and Possess an Unregistered Destructive Device)

On or about April 7, 2022, in Virginia Beach, within the Eastern District of Virginia, the defendant, PATRICK TATE ADAMIAK, did knowingly receive and possess a destructive device, namely a M79, 40 mm grenade launcher, which was not registered to the defendant in the National Firearms Registration and Transfer Record, as required by 26 U.S.C. § 5841.

(In violation of 26 U.S.C. §§ 5841, 5845, 5861(d) and 5871)

THE GRAND JURY FURTHER CHARGES THAT:

COUNT FOUR

(Receive and Possess an Unregistered Destructive Device)

On or about April 7, 2022, in Virginia Beach, within the Eastern District of Virginia, the defendant, PATRICK TATE ADAMIAK, did knowingly receive and possess a destructive device, namely a M203, 40mm grenade launcher, which was not registered to the defendant in the National Firearms Registration and Transfer Record, as required by 26 U.S.C. § 5841.

(In violation of 26 U.S.C. §§ 5841, 5845, 5861(d) and 5871)

THE GRAND JURY FURTHER CHARGES THAT:

COUNT FIVE

(Receive and Possess an Unregistered Destructive Device)

On or about April 7, 2022, in Virginia Beach, within the Eastern District of Virginia, the defendant, PATRICK TATE ADAMIAK, did knowingly and unlawfully receive and possess two destructive devices, namely two RPG-7 variant recoilless antitank projectors, which were not registered to the defendant in the National Firearms Registration and Transfer Record., as required by 26 U.S.C. § 5841.

(In violation of 26 U.S.C. §§ 5841, 5845, 5861(d) and 5871)

FORFEITURE

THE GRAND JURY FURTHER FINDS PROBABLE CAUSE THAT:

1. Defendant PATRICK TATE ADAMIAK, if convicted of any of the violations alleged in this indictment, shall forfeit to the United States, as part of the sentencing pursuant to Federal Rule of Criminal Procedure 32.2, any firearm or ammunitioned used in or involved in the violation.

2. If any property that is subject to forfeiture above is not available, it is the intention of the United States to seek an order forfeiting substitute assets pursuant to Title 21, United States Code, Section 853(p) and Federal Rule of Criminal Procedure 32.2(e).

(In accordance with Title 18, United States Code, Section 924(d); Title 26, United States Code, Section 5872; and Title 28, United States Code, Section 2461(c).)

A TRUE BILL:

REDACTED COPY
FOREPERSON

JESSICA D. ABER
UNITED STATES ATTORNEY

By: /s/ William D. Muhr
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APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Case No. 2:22-cr-00047

UNITED STATES OF AMERICA

v.

PATRICK TATE ADAMIAK,

Defendant.

DEFENDANT'S MOTION TO DISMISS AND MEMORANDUM IN SUPPORT

Defendant Patrick Tate Adamiak ("Defendant") respectfully moves this Court to dismiss Counts 1—5 of the Superseding Indictment (ECF 28) against him. In support of this Motion, Defendant hereby states:

I. LEGAL STANDARDS

a. ULTIMATE FACTS TO SUSTAIN AN INDICTMENT

An indictment must contain "a plain, concise, and definite written statement of the essential facts constituting the offense charged." Fed. R. Crim. P. 7(c)(1). "One of the principal purposes of an indictment is to apprise the accused of the charge or charges leveled against him so he can prepare his defense." *United States v. Fogel,* 901 F.2d 23, 25 (4th Cir. 1990). The Fourth Circuit U.S. Court of Appeals has stated that "No pass constitutional muster, an indictment

must (1) indicate the elements of the offense and fairly inform the defendant of the exact charges and (2) enable the defendant to plead double jeopardy in subsequent prosecutions for the same offense." *United States v. Williams,* 152 F.3d 294, 299 (4th Cir. 1998) (citing *United States v. Sutton,* 961 F.2d 476, 479 (4th Cir. 1992)).

While an indictment that tracks the language of the statute is sufficient "as long as the language sets forth the essential elements of the crime," an indictment must also "include enough facts and circumstances to inform the defendant of the specific offense being charged." *U.S. v. Yonn,* 702 F.2d 1341, 1348 (11th Cir. 1983); *US. v. Bobo,* 344 F.3d 1076, 1083 (11th Cir. 2003); *see also US. v. Sharpe,* 438 F.3d 1257, 1263 (11th Cir. 2006).

Accordingly, while an indictment does not need to "allege in detail the factual proof that will be relied upon to support the charges," it must state sufficient ultimate facts on the face of the pleading for a court to conclude that a crime had been committed—the Government's mere conclusory recitation of the elements is insufficient. *U.S. v. Crippen,* 579 F.2d 340, 342 (5th Cir. 1978).

i. DEFINITION OF A DESTRUCTIVE DEVICE: "PLUS FACTOR" AND INTENT ARE NEEDED

A sister circuit, in interpreting the definition of destructive device under 26 U.S.C.S. § 5845(f), stated that: "[a]lthough the statute does define a 'destructive device' to include explosive devices, such as [appellee's], it also explicitly excludes from coverage any explosive device not designed for use as a weapon. 26 U.S.C. § 5845(f). Thus, a device that explodes is not covered

by the statute merely because it explodes. Statutory coverage depends upon proof that a device is an explosive plus proof that it was designed as a weapon. No explosive can constitute a destructive device within the meaning of the statute unless it has this 'plus' factor." *United States v. Hammond,* 371 F.3d 776, 780 (11th Cir. 2004) (holding that to qualify as a destructive device under the National Firearms Act, the Government must show a "plus" factor to show that it was *designed and intended* as a weapon.).

This is relevant because 26 U.S.C. § 5845(b) defines "machinegun," in relevant part, as "any combination of parts from which a machinegun can be assembled", with a "machinegun" being "any *weapon* which *shoots,* or can be readily restored to shoot, automatically more than one shot...by a single function of the trigger." (emphasis added).

Accordingly, for a set of parts to be a "machinegun" under 26 U.S.C. § 5845(b), they must be: (1) a weapon—which can be demonstrated by the "plus" factor as in *Hammond,* (2)—and must shoot automatically. Neither is properly alleged here.

b. VAGUENESS AND LENITY: THE NFA TARGETS "CRIME WEAPONS," NOT DESTROYED RELICS

The vagueness doctrine requires that a criminal statute "clearly define the conduct it proscribes." *Skilling v. United States,* 561 U.S. 358, 415 (2010) (Scalia, J., concurring in part and concurring in the judgment); *accord Johnson v. United States,* 576 U.S. 591, 596 (2015) (Fifth Amendment guarantees that every criminal law provides "ordinary people fair notice of the conduct it punishes" and is not "so standardless that it invites arbitrary enforcement").

In *United States v. Lanier,* 520 U.S. 259 (1997), the Supreme Court described three aspects of the requirement that criminal statutes give "fair warning" of what is outlawed. First, "the vagueness doctrine bars enforcement of a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Id.* at 266. Second, any ambiguity in a criminal statute must be resolved in favor of applying the statute only to conduct which is clearly covered. *Id.* Third, although clarity may be applied by judicial gloss, "due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope." *Id.; see also United States v. Denmark,* 779 F.2d 1559 (11th Cir. 1986). Central to each inquiry is "whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the defendant's conduct was criminal." *Lanier,* 520 U.S. at 267.

"A penal statute may be void for vagueness 'for either of two independent reasons.'" *City of Chicago v. Morales,* 527 U.S. 41, 56, 119 S. Ct. 1849, 144 L. Ed. 2d 67 (1999). First, a statute may be unconstitutionally vague if it "fails to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits." *Id.* (citing *Kolender v. Lawson,* 461 U.S. 352, 357 (1983). A statute may also be unconstitutionally vague if it "fails to provide explicit standards to prevent arbitrary and discriminatory enforcement by those enforcing the statute." *Lim,* 444 F.3d at 915 (citing *Karlin v. Foust,* 188 F.3d 446, 458-59 (7th Cir. 1999)). As observed by the United States Supreme Court, the requirement that a penal statute provide minimal guidelines to discourage arbitrary enforcement

is "perhaps the most meaningful aspect of the vagueness doctrine." *Smith v. Goguen,* 415 U.S. 566, 574 (1974). Without these minimal enforcement guidelines, "policemen, prosecutors, and juries are allowed to pursue their personal predilections." *Kolender,* 461 U.S. at 358.

The Sixth Circuit has held that "after exhausting the traditional tools of statutory construction, § 5845(b) remains ambiguous. *Gun Owners of Am., Inc. v. Garland,* 19 F.4th 890, 898 (U.S. 6th Cir. 2021). If statutory language is ambiguous, then "the rules of statutory construction allow the Court to look beyond the plain language reading of the statute to its legislative history in order to further aid in its interpretation." *Id.* at 1010. "[T]he purpose of Firearms Act, of which § 5861 is a part, is to go after crime weapons," not spare parts and destroyed relics. *See U.S. v. Vest,* 448 F. Supp. 2d 1002, 1014 (S.D. Ill. 2006).

"[A] law imposing criminal sanctions—whether it be a statute or a regulation—must provide fair notice of the prohibited conduct." *Gun Owners of Am., Inc.,* 19 F.4th at 901. The rule of lenity "is premised on two ideas: First, 'a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed'; second, 'legislatures and not courts should define criminal activity." *Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or.,* 515 U.S. 687, 704 n.18, 115 S. Ct. 2407, 2416 (1995). The government's conduct here falls short of both.

c. CONGRESS HAS EXCEEDED ITS AUTHORITY UNDER THE TAX AND SPEND CLAUSE

"Congress cannot punish felonies generally." *Cohens v. State of Virginia,* 19 U.S. 264, 428 (1821). Accordingly, every criminal penalty it enacts "must have some relation to the execution of a power of Congress" *(Bond v. U.S.,* 572 U.S. 844, 844, 134 S. Ct. 2077, 2083 (2014)), like the "power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States," so long as they are "uniform throughout the United States." U.S. Const., Art. I, § 8, cl. 1. A law which does not attach consequences "beyond requiring a payment to the IRS" is a penalty—not a tax. *Id.* at 567-68. Individuals who produce items like the machinegun have no option to pay a tax. *See United States Justice Manual 9-63.516,* "Charging Machinegun Offenses Under 18 U.S.C. § 922(o), Instead of Under the National Firearms Act," 1999 WL 33219894, at *1. (because it is impossible to comply with the registration and taxation provisions in the NFA, prosecutors should charge the unlawful possession or transfer of a machine gun made after May 19, 1986 under § 922(o).

II. THE GOVERNMENT FAILED TO STATE SUFFICIENT ULTIMATE FACTS TO ALLEGE A CRIME

a. AS PLED, AND IN FACT, THE COMPLAINED OF ITEMS ARE NOT DESTRUCTIVE DEVICES OR MACHINEGUNS

Counts 1 and 2 of the indictment are entirely barren as to what makes the alleged PPSH a machinegun. It merely asserts the existence of a PPSH and its status

as a machinegun. This allegation is insufficient as a matter of law.

Notably, the indictment did *nothing* to describe the alleged PPSH. This is because no machinegun exists. In a manner that colors the virtual entirety of the superseding indictment, compounding the vagueness problem, the government has made no allegations as to what renders the items at the core of this matter unlawful. The PPSH and other items in question were not machineguns or destructive devices, or even weapons, but rather destroyed, nonfunctional relics of the type commonly sold online and at enthusiast exhibitions. *See* Ex. A.

Second, the Government did not allege anything that can be construed as an adequate "plus" factor under case law interpreting as explained *supra.* In *Hammond,* "[t]he 'firearm' in question was a cardboard tube, approximately thirteen inches long and one-and-one half inches in diameter." The inside of the tube "was filled with...nine ounces of...an explosive powder[.]" "A green fuse, wrapped in aluminum foil, was placed through one of the ends and ran to the center of the device." *Id.* at 778. The court found that the explosive capabilities, and even the threat of serious injury was "not enough to bring the device within the statutory framework" because it did not have the "plus factor" to show that it was designed as a weapon. *Id.* at 780. Similarly, in this case the Superseding Indictment is facially defective because there is no "plus" factor alleged to sustain the legal conclusion that these destroyed, nonfunctional relics are designed and intended solely for use as a weapon, as required by the statute.

The Government may argue that *Hammond* is distinguishable from the PPSH at issue in this case

because it involves a "destructive device" under § 5845(f) which specifically excludes "any device which is neither designed nor redesigned for use as a weapon" as opposed to a "machinegun" under § 5845. Defendant submits that the standard under § 5845(b) is actually more stringent than the destructive device definition because it includes the language "designed and intended solely and exclusively" as opposed to merely "designed". *See also Def. Distributed v. United States Dep't of State,* 838 F.3d 451, 454 (5th Cir. 2016) (discussing "an unfinished piece of metal that looks quite a bit like a lower receiver but is not legally considered one and may therefore be bought and sold freely" that "requires additional milling and other work to turn into a functional lower receiver"); John Markoff, *Data-Secrecy Export Case Dropped by U.S.,* The New York Times, Jan. 12, 1996, https://www.nytimes.com/1996/01/12/business/data-secrecy-export-case-dropped-by-us.html (The Government, which regarded cryptographic software as a munition under the Arms Export Control Act, dropped a criminal investigation of Zimmermann without an indictment, stemming from his releasing an encryption program as shareware.).

What case law has made clear in this otherwise ambiguous definition is that the law requires something much more than the barebones Government has alleged. Accordingly, the Superseding Indictment should be dismissed.

III. VAGUENESS AND LENITY: THERE WAS NO FAIR WARNING THAT THE CONDUCT ALLEGED AGAINST MR. ADAMIAK IS A CRIME

The Government has charged Mr. Adamiak with violating 26 §§ U.S.C. 5841, 5845, 5871(d), and 5871,

and 18 U.S.C. § 922(o) in Counts 1—5 of the Superseding Indictment. And for reasons thoroughly stated *supra,* the Government has failed to state sufficient ultimate facts to sustain those allegations, much less support scienter, as would be required on all charged counts.

In no event would a reasonably intelligent person foresee that the conduct charged in this case—the mere possession of freely available, non-functional components—would be deemed criminal. *See Ex. A.* As applied against Mr. Adamiak, the charged statutes are unconstitutionally vague under the Fifth Amendment.

It is worth emphasizing that no court has ever applied the National Firearms Act to a fact pattern like this one with respect to the PPSH, and the government's charge for the remaining items is inconsistent with ATF's own prior rulemaking. Defendant here is a simple collector of surplus. The conduct at issue certainly isn't in the heartland of machinegun cases.

As the Sixth Circuit recently wrote, after exhausting the traditional tools of statutory construction, the charged statutes remain ambiguous. *See Gun Owners of Am., Inc. v. Garland,* 19 F.4th 890, 898 (U.S. 6th Cir. 2021). However, the law's purported purpose "is to go after crime weapons," not mere militaria as is the case here. *See Vest,* 448 F. Supp. at 1014. The law is, at best, ambiguous in whether it applies to the conduct alleged against the charged conduct—simple possession of non-functioning, freely available hardware—and accordingly, the rule of lenity also requires it to be construed narrowly.

"The Attorney General has directed the Director of the Bureau of Alcohol, Tobacco, Firearms and

Explosives (ATF) to administer, enforce, and exercise the functions and powers of the Attorney General with respect to Chapter 44 of Title 18 and Chapter 53 of Title 26. 28 C.F.R. § 0.130(a)." *Gun Owners of Am., Inc.,* 19 F.4th at 897. "The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." *Chevron, U.S.A., Inc. v. NRDC, Inc.,* 467 U.S. 837, 843, 104 S. Ct. 2778, 2782 (1984). Unlike with widely publicized bump stocks, suppressors, and other items, ATF has issued no guidance relating to drawings. In fact, ATF recently rescinded *all* guidance in the context of what is and is not a "firearm" when it comes to incomplete or "partially finished" articles. *See Definition of "Frame or Receiver" and Identification of Firearms,* 87 F.R. 24652 at 24672 ("Any such classifications, to include weapon or frame or receiver parts kits, would need to be resubmitted for evaluation.").

Because "[a]pplying the statute to determine whether a device constitutes a machinegun [or destructive device] is within ATF's substantive field", the government may seek to invoke *Chevron.* However, *Chevron* does not displace the rule of lenity "simply because an agency has interpreted a statute carrying criminal penalties." *See id.* at 901. As the Supreme Court wrote in *Babbitt:*

> We have applied the rule of lenity in a case raising a narrow question concerning the application of a statute that contains criminal sanctions to a specific factual dispute . . . where no regulation was present.

Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or., 515 U.S. 687, 704 n.18 (1995).

Where there is ambiguity in a criminal statute—or regulation interpreting that statute, doubts are resolved in favor of the defendant. *See Yates v. United States,* 574 U.S. 528 (2015); *Skilling v. United States,* 561 U.S. 358 (2010); *United States v. Santos,* 553 U.S. 507 (2008); *Jones v. United States,* 529 U.S. 848 (2000); *United States v. Izurieta,* 710 F.3d 1176 (11th Cir. 2013); *United States v. Trout,* 68 F.3d 1276 (11th Cir. 1995). Here, similarly, the only administrative rulemakings and applicable caselaw point towards Mr. Adamiak's conduct being lawful.

The government has not alleged that any of the items were functional, assembled, or even complete. This is because none of them were. It is hard to glean strategy from a blank canvas, but assuming, *arguendo,* that the government may claim there was some manner or way of assembling separate parts into an unlawful configuration. The fact that there may be a way to assemble lawfully owned parts into an illegal firearm or destructive device does not render the parts unlawful, as explored thoroughly in *United States v. Thompson-Center Arms Company.* 504 U.S. 505 (1992) (a kit including a 10-inch-barreled pistol, a 16-inch barrel, and a buttstock was not a "short barreled rifle"). The *Thompson-Center* Court opined that components from which an NFA firearm could be made could only be considered an NFA firearm if they were kept in such a manner that the only useful purpose therefore would be to create an NFA firearm. This case does not smack of such, and as such, this honorable Court should invoke the rule of lenity, as the Court did in *Thompson-Center.*

ATF itself is aware of this and has issued a rulemaking clarifying that the simple possession of parts from which an NFA firearm might *possibly* be

constructed is not the same as possession of an NFA firearm. ATF Rul. 2011-4.

The Supreme Court in *Yates* explained that if the statute "leaves any doubt" about the application of the statute to the facts to which the government seeks to have the statute apply, the rule of lenity precludes such application. *I.e.,* "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Yates,* 574 U.S. at 547-48 (quoting *Cleveland v. United States,* 531 U. S. 12, 25 (2000) and *Rewis v. United States,* 401 U. S. 808, 812 (1971)); *see Liparota v. United States,* 471 U. S. 419, 427 (1985) ("Application of the rule of lenity ensures that criminal statutes will provide fair warning concerning conduct rendered illegal and strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability."). In determining the meaning of "machinegun" under the National Firearms Act, "it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." *Yates,* 574 U.S. at 548, (quoting *Cleveland,* 531 U.S. at 25, and *United States v. Universal C. I. T. Credit Corp.,* 344 U. S. 218, 222 (1952)); *see also Jones v. United States,* 529 U. S. 848, 858-859 (2000). *Santos* explained that the rule of lenity "not only vindicates the fundamental principle that no citizen should be held accountable for a violation of a statute whose commands are uncertain, or subjected to punishment that is not clearly prescribed. It also places the weight of inertia upon the party that can best induce Congress to speak more clearly and keeps courts from making criminal law in Congress's stead." *Santos,* 553 U.S. at 514.

IV. THE GOVERNMENT'S CONDUCT IS VIOLATIVE OF THE SECOND AMENDMENT

a. THE *BRUEN* DECISION AND ITS LEGAL STANDARD

Bruen held as unconstitutional New York's 1911 Sullivan Act, requiring a license and demonstration of "proper cause" for the possession and carrying of a concealable firearm. *Bruen,* 597 U.S. __ at *2. What makes *Bruen* particularly germane to the instant matter is its announcement of a clear legal standard for the evaluation of acts regulating the peaceable keeping and bearing of arms. *Bruen* identified the Court of Appeals' "coalesce[ing] around a 'two-step' framework for analyzing Second Amendment challenges that combines history with means-ends scrutiny", the Court correctly identified this as "one step too many[.]" *Id.* *9-10. Those previous decisions at the various Courts of Appeal manifested deference to the Government in a manner unlike that seen in the context of any other fundamental right and identified as improper the hand-waving of laws clearly targeted at bearing arms as without the scope of the Second Amendment. *Id.* *14 (reading case law to "necessarily reject[]" intermediate scrutiny in the Second Amendment context, further positing that a "constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all.") (quoting *Heller v. District of Colombia,* 554 U.S. 570 at 634 (2008)).

The Court has now articulated a standard which clearly defines the burdens in a case involving restrictions on the right to keep and bear arms. It is, as artfully penned by the Court, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The Government must *then* justify its

regulation by demonstrating that it is consistent with the Nation's historical tradition of firearms regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.' (cleaned up) (emphasis added).

To summarize: any law, regulation, or government policy affecting the "right of the people to keep and bear arms," U.S. CONST., Amend. II, can only be constitutional if the Government demonstrates analogous restrictions deeply rooted in American history evinced by historical materials contemporaneous with the adoption of the Bill of Rights in 1791. *Bruen,* 597 U.S. at *29.

b. THE STATUTES HERE AT ISSUE AFFECT CONDUCT COVERED BY THE SECOND AMENDMENT'S "UNQUALIFIED COMMAND"

Defendant is charged under 18 U.S.C. 5841, 5845, 5861 and 5871, and 18 U.S.C. § 922(o), as well criminal forfeiture related to those alleged offenses. The charged statutes deal with the taxation and transfer of destructive devices, machineguns, and other arms. The Government alleges the components at issue—without explanation—to be machineguns and destructive devices. What's more, the passage of §922(o), subsequent to the passage of the other charged statutes, render it impossible to comply with the taxing provisions in the machinegun context, thus leaving the statutes a bizarre, vestigial area of law passed pursuant to the taxing power which—in dubious constitutionality—is used by the Government as an independent effective prohibition on the sale, transfer, or possession of machineguns not registered by 1986.

The Government may attempt to argue that machineguns and destructive devices are beyond the scope of the Second Amendment by attempting to characterize them as "dangerous and unusual," as it has in other cases, but this is not the test. The court's invocation of "dangerous and unusual" weapons in *Heller* and subsequently thoroughly discussed in *Bruen* was in discussion of the 1328 Statute of Northampton and its progeny, which regulated the *carrying* of "dangerous and unusual" arms *in such a manner as would necessarily cause terror.* As the *Bruen* Court correctly observed, this historical legislation passed by the parliament of England was not analogous to a law restricting the carrying of arms generally, and thus is not logically analogous to the statutes at issue, which impose severe criminal penalties on the mere peaceable possession of arms. *Bruen,* 597 U.S. at *12 (Clarifying that the Court was not undertaking "an exhaustive historical analysis…of the full scope of the Second Amendment") (quoting *Heller,* 554 U.S. at 627).

The only way a court may conclude a defendant's conduct falls outside the scope of the Second Amendment's unqualified command remains clear: the Government must prove the particular regime in question is consistent with the history and tradition of the United States. *Id* at *15. Furthermore, the question of whether a weapon is "in common use at the time," necessarily pins the analysis to the time *before the prohibition.* To consider otherwise would incentivize the Government to legislate wantonly and aggressively, seizing arms, then later evade constitutional scrutiny by suggesting that the arms cannot be in common use, because the government prohibited them. Such circular logic would be inconsistent with any fundamental rights jurisprudence. Thus, the Government must

prove whether the arms at issue were available for lawful use before 1934, plus whether the regime in question is consistent with the history and tradition of firearms regulation in this country around the founding era.

c. THE LAWS HERE AT ISSUE ARE FACIALLY UNCONSTITUTIONAL UNDER *BRUEN*

No federal regulation of firearms existed before the 1934 enactment of the main laws here at issue. In addition to the previously raised Constitutional questions, nothing in the applicable history and tradition of the United States supports the categorical ban of arms, much less nonfunctional items the Government might, with their own resources and labor, transform into weapons. Further, the ATF's decision that the nonfunctional collectibles here at issue were regulable came completely by administrative fiat, absent even notice and comment. Our Nation's history and tradition does not, and cannot, support a finding that nonfunctional, freely sold merchandise can carry life-ruining criminal penalties depending only on the opinion of an unelected bureaucrat. To hold otherwise would be to grant the Bureau more power than Congress could have ever lawfully granted it and render innumerable items potentially illegal. *See Bruen,* 597 U.S. at *19-20 ("Like all analogical reasoning, determining whether a historical regulation is a proper analogue for a distinctly modern firearms regulation requires a determination of whether the two regulations are "relatively similar." . . . "Even though the Second Amendment's definition of 'arms' is fixed according to its historical understanding, that general definition covers modern instruments that

facilitate armed self-defense.") (cleaned up) (internal citations removed).

As *Bruen* explained, historical analogues to a regulation can be helpful, but Defendant here proffers more modern evidence that a categorical ban on arms, as the Government here seeks to enforce against trinkets, would be unconstitutional. We present the testimony of then-Attorney General Cummings at a 1934 hearing on the National Firearms Act.

> MR. LEWIS: I hope the courts will find no doubt on a subject like this, General; but I was curious to know how we escaped that provision in the Constitution.
>
> ATTORNEY GENERAL CUMMINGS: Oh, we do not attempt to escape it. We are dealing with another power, namely, the power of taxation, and of regulation under the inter-state commerce clause. You see, if we made a statute absolutely forbidding any human being to have a machine gun, you might say there is some constitutional question involved. *But* when you say "We will tax the machine gun" and when you say that "the absence of a license showing payment of the tax has been made indicates that a crime has been perpetrated", you are easily within the law.
>
> MR. LEWIS: In other words, it does not amount to prohibition, but allows of regulation.
>
> ATTORNEY GENERAL CUMMINGS: That is the idea. We have studied that very carefully.

National Firearms Act: Hearings before the Committee on Ways and Means, House of Representatives on

H.R. 9066, 73 Cong. 2d Sess. (1934). Defendant posits that the then-Attorney General, advancing the very law whose constitutionality was even then dubious, admitting that a categorical ban on machineguns would present constitutional problems, is instructive that there is no historical basis for the current regime—essentially reflecting what Mr. Cummings describes as problematic—consistent with the Second Amendment. Defendant further posits that the later-enacted 922(o) completes the logical circuit Mr. Cummings described in 1934.

d. THE LAWS HERE AT ISSUE ARE UNCONSTITUTIONAL AS APPLIED TO DEFENDANT UNDER *BRUEN*

In the alternative to that advanced above, the application of the charged offenses are unconstitutional as it applies to Defendant. Even if the Government could somehow prove to the Court that the wholesale felonization of the peaceable possession of an entire category of arms to be consistent with the Constitution, this case presents something far more peculiar: an administrative agency's unilateral decision that nonfunctional items—as the exhibits show are freely traded—might subject its owner to lengthy prison terms. There can be no historical justification, consistent with the "unqualified command" of the Second Amendment, plus the clear metes of the First, that could justify such a prosecution. Should any exist, the Government bears the burden to prove it. *Bruen* at *15 ("Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'"); *id.* at *20 ("whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are 'central'

considerations when engaging in an analogical inquiry.) (cleaned up) (quoting *McDonald v. Chicago,* 561 U.S. 742 at 767 (2010)).

V. CONCLUSION

For all the reasons argued *supra,* the Superseding Indictment should be dismissed against Mr. Adamiak. It is defective for failing to state sufficient ultimate facts, there is no "plus factor" alleged necessary to make a finding that the alleged items violate the NFA or GCA, this prosecution runs afoul of the rule of lenity, and the government is without the power to regulate as it has. Accordingly, the Government has failed to allege that Mr. Adamiak committed a crime, much less that he has committed one with scienter. The Court should err on the side of lenity and Mr. Adamiak. He should not be forced to endure a criminal trial (and possible appeals) just so that the government can test novel applications of the National Firearms Act.

If the Court dismisses this case, the Government can appeal, and if the Fourth Circuit holds that the National Firearms Act and Gun Control Act can constitutionally be applied to the facts alleged in this case, then the prosecution can proceed. The Government will not have suffered any harm. The opposite is not at all true for Mr. Adamiak. Using Mr. Adamiak as a guinea pig will needlessly and irreparably harm his reputation, financially ruin him, and necessarily divert his attention and time to defending himself against these dubious charges.

Wherefore, Defendant Patrick Tate Adamiak respectfully moves this Honorable Court to dismiss the Superseding Indictment against him in its entity with prejudice, and for any further relief that this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of August 2022, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record, including the following:

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EXHIBIT A

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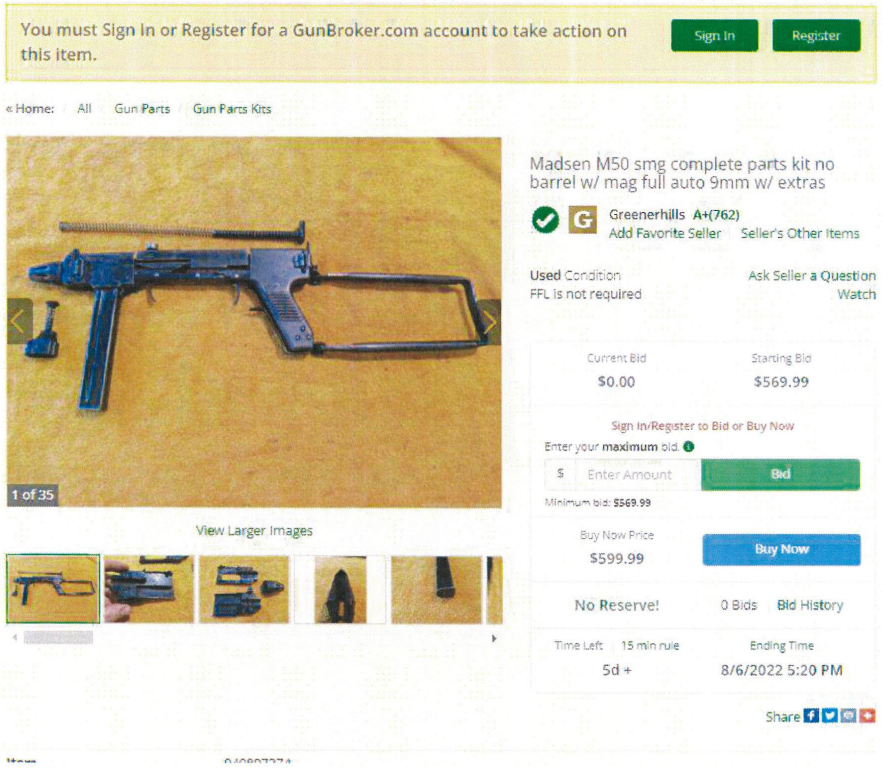
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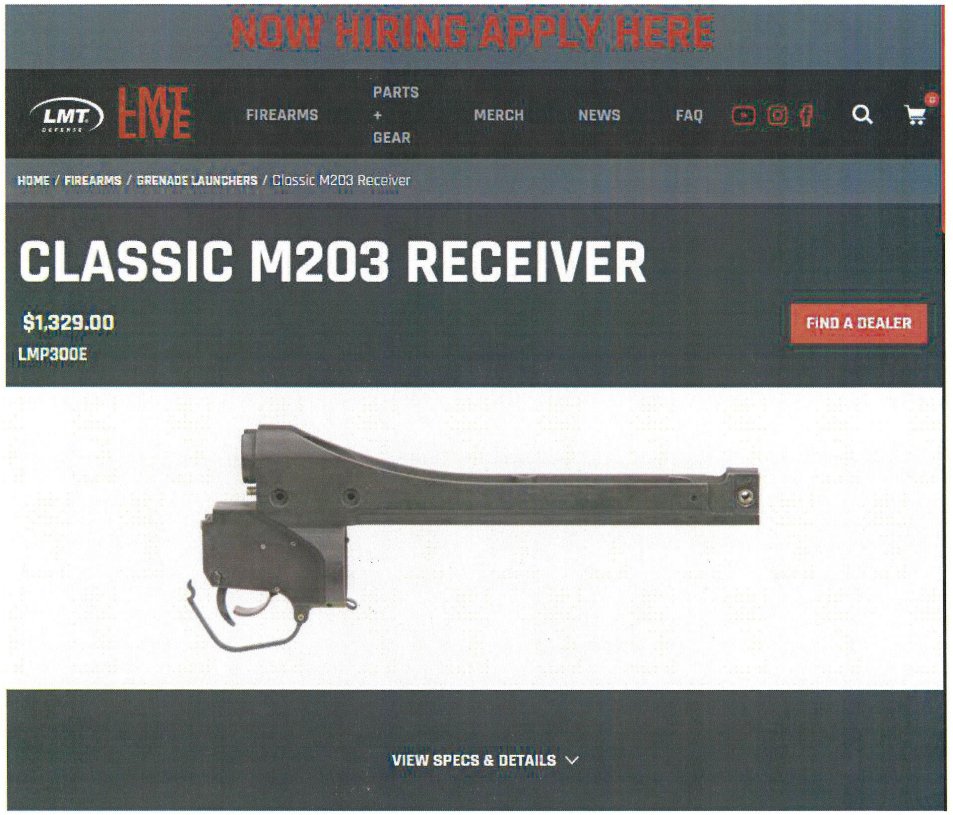
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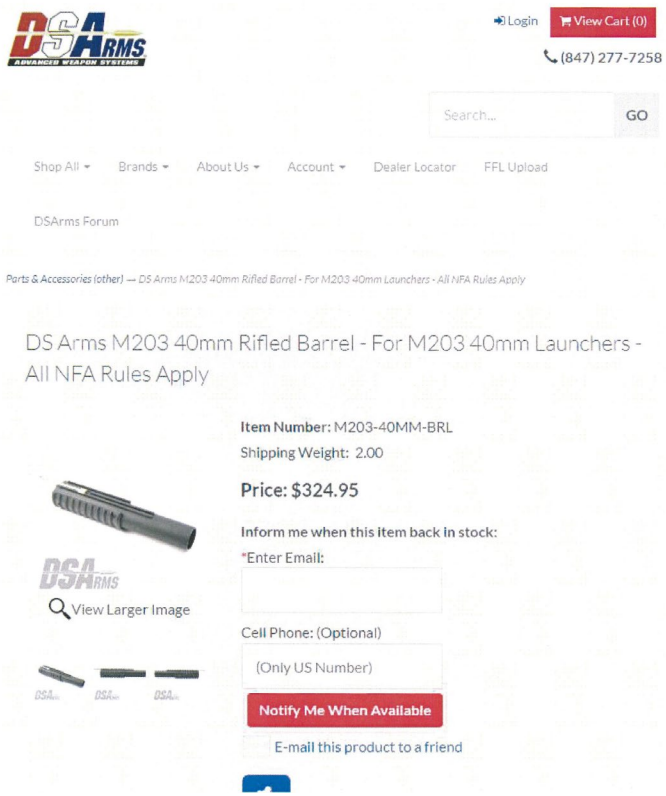
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APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Criminal No. 2:22-cr-47

UNITED STATES OF AMERICA,

v.

PATRICK TATE ADAMIAK,

Defendant.

UNITED STATES' RESPONSE TO
DEFENDANT'S MOTION TO DISMISS

COMES NOW the United States of America, by and through its attorneys, Jessica D. Aber, United States Attorney, William D. Muhr, Assistant United States Attorney, and Victoria Liu, Special Assistant United States Attorney for the Eastern District of Virginia, and respectfully files its response to Defendant's motion to dismiss ("Motion"). In support thereof, the government avers the following:

ARGUMENT

The United States respectfully opposes the defendant's motion to dismiss. The defendant contends that the indictment fails to allege offenses, that the relevant statutes defenses are unconstitutionally vague and must be construed using the rule of lenity, that Congress exceeded its authority under the tax and spending clauses, and that the charges here violate the

Second Amendment. All of the defendant's arguments fail, as explained below.

I. The Indictment Sufficiently Charges Offenses.

An indictment is sufficient if it "(1) alleges all of the elements of the offense; (2) fairly informs the defendant of what he must be prepared to meet; (3) protects him against double jeopardy; and (4) enables the Court to determine whether the facts alleged are sufficient in law to withstand a motion to dismiss or to support a conviction." *United States v. Marra,* 481 F.2d 1196, 1199 (6th Cir. 1973). As an initial matter, here the superseding indictment meets all of these elements in that it states the specific sections of the statutes that were violated, gives the approximate timeframes for the offenses, and gives a brief description of the offenses.

A. Defendant prematurely asks the Court to look beyond the four corners of the superseding indictment.

In support of his argument to dismiss the superseding indictment, Defendant argues that: (1) a destructive device or machinegun as defined under 26 U.S.C. § 5845 must be both an explosive device and include a "plus" factor under *United States v. Hammond,* 371 F.3d 776, 780 (11th Cir. 2004), and the PPSH and destructive devices did not meet these definitions and (2) the statutes at issue are unconstitutionally vague and thus require the application of the rule of lenity.

Defendant then offers several erroneous facts in support of these arguments, including that "[t]he PPSH and other items in question were not machineguns or destructive devices, or even weapons, but rather destroyed, nonfunctional relics...," that this case involves the possession of "freely available, non-

functional components," and multiple characterizations of the charged weapons as "militaria" or "hardware."[1] *See* Def. Mot. at 6-9. Disregarding that the weapons the Defendant possessed were fully functional and complete, Defendant prematurely asks the Court to make factual findings before any evidence is presented. *See United States v. Sharpe,* 438 F.3d 1257, 1263 (11th Cir. 2006) (stating that "a district court is limited to reviewing the face of the indictment and, more specifically, the language used to charge the crimes.").

B. The statutes are not unconstitutionally ambiguous, and therefore the rule of lenity does not apply.

Without ambiguity, the rule of lenity does not apply. *See United States v. George,* 946 F.3d 643 (4th Cir. 2020) (conditioning application of the rule on the existence of ambiguity in the statute). Courts have consistently found that the relevant statutes of the National Firearms Act (NFA) are not ambiguous. *See United States v. M-K Specialties Model M-14 Machinegun Serial #1447797,* 424 F. Supp. 2d 862, 872 (N.D.W. Va. 2006) (holding that "the plain and unambiguous language of section 5845(b)" requires that firearms incapable of automatic fire are deemed "machineguns" because the weapons can be "readily restored" to so fire); *United States v. TRW Rifle 7.62x51mm Caliber,* 447 F.3d 686, 692 n.11 (9th Cir. 2006) (explaining that to the extent [Defendant] argues that there is some

[1] Without going into detail about each portion of Def. Ex. A, the government generally states that the items listed are irrelevant to the facts of this case in that those items may not be firearms, but the weapons that Defendant possessed factually are. Further, the mere fact that others sell similar items does not make their possession or sale legal.

ambiguity in "readily restored" because he can craft a narrower definition, we decline to hold the terms ambiguous or apply the rule of lenity). Indeed, in *United States v. Drasen,* 845 F.2d 731, 738 (7th Cir. 1988) the court considered whether unassembled and never previously assembled constituent parts of a rifle are in fact a short-barrel rifle within the meaning of the National Firearms Act. The court held that the "defendants were not deprived of fair warning that their transactions in short-barrel rifles would violate the Act." *Id.* In addressing the Defendant's argument, it noted that "the principle of lenient construction does not require a court to ignore the obvious intention of the legislature in enacting the statute," noting that the National Firearms Act was designed to "regulate the manufacture, possession, and transfer of 'modern and lethal weapons . . . [that] could be used readily and efficiently by criminals or gangsters'." *Id.*

II. Congress Did Not Exceed Its Authority Under the Tax and Spending Clauses.

The defendant also suggests that Congress exceeded its tax authority. The argument is not discussed in any thorough manner, but the issue has long been decided. *See United States v. Aiken,* 787 F. Supp. 106 (D. Md. 1992) (prohibiting the possession of an NFA weapon that has not been registered and taxed upon transfer has been found to be constitutional); *see also Zwak v. United States,* 848 F.2d 1179 (11th Cir. 1988); *United States v. Bennett,* 709 F.2d 803 (2d Cir. 1983); *United States v. Homa,* 608 F.2d 407 (10th Cir. 1979); *United States v. Tous,* 461 F.2d 656 (9th Cir. 1972); *United States v. Ross,* 458 F.2d 1144 (5th Cir. 1972); *United States v. Wilson,* 440 F.2d 1068, 1069 (6th Cir. 1971); *Milentz v. United States,* 446 F.2d 111, 112 (8th Cir. 1971); *United States v. Giannini,* 455 F.2d 147, 148 (9th

Cir.1972). (The statute, rationally designed to aid in the collection of taxes, is therefore constitutional under Congress' taxing power.); *US. v. Cox,* 906 F.3d 1170 (10th Cir. 2018). *US. v Haney,* 264 F.3d 1161 (10th Cir. 2001) (18 U.S.C. §922(o) was a proper exercise of Congress' authority under the commerce clause.).

In addition, the defendant alludes to the "impossibility" defense in which only the Tenth Circuit has held that section 922(o) and a violation of section 5861 cannot be charged. The Fourth Circuit rejected the Tenth Circuit's analysis and disposed of this issue long ago. *United States v. Jones,* 976 F.2d 176, 183 (4th Cir. 1992) ("...the amendment to the Gun Control Act effectively rendered possession of certain guns automatic violations of both the Gun Control Act and the National Firearms Act. Yet there is nothing either inconsistent or unconstitutionally unfair about Congress' decision to do so.").

III. The Charges Against Defendant Do Not Violate the Second Amendment.

Defendant is charged under 18 U.S.C. §§ 5841, 5845, 5861, and 5871 and 18 U.S.C. § 922(o). In his motion to dismiss, he contends that these charges violate the Second Amendment under the Supreme Court's recent decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen,* 142 S. Ct. 2111 (2022). But the Supreme Court previously concluded that regulations of machineguns (and even more so a grenade launcher or antitank projector) fall outside the Second Amendment, and nothing in *Bruen* altered that precedent.

In making his Second Amendment argument, defendant mounts both a facial challenge, requiring the laws at issue to be invalid in all of their applications, *see, e.g., Bucklew v. Precythe,* 139 S. Ct.

1112, 1128 (2019), and an as-applied challenge that turns on the conduct charged in his case. The facial challenge fails because the Supreme Court has made clear that regulations of machineguns fall outside the Second Amendment. Defendant's as-applied challenge is not stronger. As an initial matter, the premise of his as-applied argument—that the offense conduct does not involve assembled weapons—is false and cannot be resolved on a motion to dismiss, *see, e.g., United States v. Weaver,* 659 F.3d 353, 355 n.* (4th Cir. 2011), but even accepting the factual premise of his argument, his as-applied Second Amendment argument makes no sense because it would expand the Second Amendment into a limitation on the regulation of machineguns, grenade launchers, and antitank projectors. There is no basis for such a prohibition.

The Second Amendment right—"like most rights"—is not unlimited; it does not allow every person "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *D.C. v. Heller,* 554 U.S. 570, 626 (2008). One important limitation is that *Heller* did not disturb the result in *United States v. Miller,* 307 U.S. 174 (1939). As *Heller* explained, "The judgment in *[Miller]* upheld against a Second Amendment challenge two men's federal indictment for transporting an unregistered short-barreled shotgun in interstate commerce, in violation of the National Firearms Act, 48 Stat. 1236." *Heller,* 554 U.S. at 62122. *Heller* continued that "the Court's basis for saying that the Second Amendment did not apply was ... that the *type of weapon at issue* was not eligible for Second Amendment protection." *Id.* at 622 (emphasis in original). *Heller* concluded, "We therefore read *Miller* to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-

barreled shotguns. That accords with the historical understanding of the scope of the right." *Id.* at 625.

In describing limits on the scope of the Second Amendment right at the conclusion of the *Heller* opinion, the Supreme Court returned to *Miller* and explained one "important limitation on the right to keep and carry arms. *Miller* said, as we have explained, that the sorts of weapons protected were those 'in common use at the time.' We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" 554 U.S. at 637 (citing *Miller,* 307 U.S. at 179; 4 W. Blackstone, Commentaries on the Laws of England 148-49 (1769); B. Wilson, Works of the Honourable James Wilson 79 (1804); J. Dunlap, The New—York Justice 8 (1815); C. Humphreys, A Compendium of the Common Law in Force in Kentucky 482 (1822); 1 W. Russell, A Treatise on Crimes and Indictable Misdemeanors 271-272 (1831); H. Stephen, Summary of the Criminal Law 48 (1840); E. Lewis, An Abridgment of the Criminal Law of the United States 64 (1847); F. Wharton, A Treatise on the Criminal Law of the United States 726 (1852). *See also State v. Langford, 10* N.C. 381, 383384 (1824); *O'Neill v. State,* 16 Ala. 65, 67 (1849); *English v. State,* 35 Tex. 473, 476 (1871); *State v. Lanier,* 71 N.C. 288, 289 (1874)).

Heller therefore established that a restriction like the ones at issue in this case, on machineguns, grenade launchers, and antitank projectors, is supported by the historical traditions that place such regulations outside the Second Amendment. *Heller* recognized that "[i]t may be objected that if weapons that are most useful in military service—M-16 rifles and the like—may be banned, then the Second Amendment right is completely detached from the prefatory clause" that

refers to militias, but *Heller* explained that "the fact that modern developments have limited the degree of fit between the prefatory clause and the protected right cannot change our interpretation of the right." *Heller,* 554 U.S. at 627-28.

Bruen did not change this aspect of *Heller* and did not alter *Heller's* understanding about the regulation of machineguns like "M-16 rifles and the like." *Bruen* reaffirmed *Heller's* finding there is a "fairly supported" "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.' *Bruen,* 142 S. Ct. at 2128 (citing 4 W. Blackstone, Commentaries on the Laws of England at 148-149: *Miller,* 307 U.S. at 179). Likewise, Justice Kavanaugh's concurring opinion, joined by the Chief Justice, reiterated an "important limitation on the right to keep and carry arms." *Bruen,* 142 S. Ct. at 2162. *"Miller* said, as we have explained, that the sorts of weapons protected were those in common use at the time. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons." *Id.* (citing *Heller,* 554 U.S. at 626-627, and n. 26; *McDonald v. City of Chicago,* 561 U.S. 742, 786 (2010) (plurality opinion)).

Multiple courts have correctly relied on *Heller* to conclude that machineguns fall outside the Second Amendment's scope. *See, e.g., United States v. One (1) Palmetto State Armory PA-15 Machinegun Receiver/ Frame,* 822 F.3d 136, 141-44 (3d Cir. 2016); *Hollis v. Lynch,* 827 F.3d 436, 449-51 (5th Cir. 2016); *Hamblen v. United States,* 591 F.3d 471, 473-74 (6th Cir. 2009); of semi-automatic rifles, the Fourth Circuit's ruling in *Kolbe* remains precedent and *a fortiori* validates a regulation of machineguns, grenade launchers, and antitank projectors.

The government need not offer additional evidence under *Bruen* of "demonstrat[ing] that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Bruen,* 142 S. Ct. at 2126. *Heller* already conducted that historical analysis and cited a variety of historical sources. *Heller,* 554 U.S. at 627. Those sources and *Heller's* reliance on them amply establish a historical tradition of regulating dangerous and unusual firearms.

CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court deny the Defendant's motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 25, 2022, I electronically filed a copy of the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Criminal No. 2:22cr47

UNITED STATES OF AMERICA,

v.

PATRICK TATE ADAMIAK,

Defendant.

ORDER

Pending before the Court is a Motion to Dismiss Counts 1-5 of the Superseding Indictment (the "Motion") by Defendant Patrick Tate Adamiak. ECF No. 37. For the reasons stated below, the Motion is DENIED.

I. BACKGROUND

On June 23, 2022, a grand jury charged Defendant Adamiak with Count 1 — Receive and Possess an Unregistered Firearm, in violation of 26 U.S.C. §§ 5841, 5845, 5861(d), and 5871; Count 2 — Unlawful Possession and Transfer of a Machinegun, in violation of 18 U.S.C. § 922(o); and Counts 3-5 — Receive and Possess an Unregistered Destructive Device, in violation of 18 U.S.C. §§ 5841, 5845, 5861(d), and 5871. Superseding Indictment, ECF No. 28. On July 27, 2022, Defendant filed a Motion to Dismiss the Superseding Indictment. ECF No. 37. On August 5,

2022, the Government submitted a Response to the Motion. ECF No. 43. Defendant did not submit a reply. The Motion is now ripe for adjudication. The Court has determined that a hearing on the Motion is unnecessary, as the issues for decision are adequately presented in the briefs. See E.D. Va. Local Crim. R. 47(J).

II. LEGAL STANDARD

A. Sufficiency of Indictment

When a criminal defendant challenges the sufficiency of an indictment, the Court applies heightened scrutiny to ensure that every essential element of an offense has been charged. *United States v. Perry,* 757 F.3d 166, 171 (4th Cir. 2014). The indictment at issue must contain every essential element of the offenses charged, fairly inform a defendant of the charges, enable the defendant to plead double jeopardy as a defense in a future prosecution for the same offenses, and contain a statement of essential facts constituting the offenses charged. *United States v. Spirito,* No. 4:19cr43, 2020 WL 201643, at *1 (E.D. Va. Jan. 13, 2020) (citing *Perry,* 757 F.3d at 171). "It is generally sufficient that an indictment set forth the offense in the words of the statute itself, as long as those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the [offense] intended to be punished." *Perry,* 757 F.3d at 171 (cleaned up).

When considering a motion challenging the sufficiency of an indictment, a court is limited to the allegations contained in the indictment. *Spirito,* 2020 WL 201643, at *2 (citing *United States v. Engle,* 676 F.3d 405, 415 (4th Cir. 2012)). "Courts lack the authority to review the sufficiency of evidence supporting an

indictment and may not dismiss on a determination of facts that should have been developed at trial." *Id.* (citing *Engle,* 676 F.3d at 415).

B. Statutory Ambiguity and the Rule of Lenity

"When interpreting a statute, courts must 'first and foremost strive to implement congressional intent by examining the plain language of the statute.'" *United States v. George,* 946 F.3d 643, 645 (4th Cir. 2020) (quoting *United States v. Abdelshafi,* 592 F.3d 602, 607 (4th Cir. 2010)). Absent ambiguity, courts apply the statute's plain meaning as determined by reference to the words' ordinary meaning at the time of the statute's enactment. *Id.* If a criminal statute is ambiguous, the rule of lenity applies and requires that the statute's ambiguity be resolved in favor of lenity for the accused. *Id.* "Criminal statutes are 'strictly construed and should not be interpreted to extend criminal liability beyond that which Congress has plainly and unmistakenly proscribed.'" *Id.* (quoting *United States v. Hilton,* 701 F.3d 959, 966 (4th Cir. 2012) (cleaned up)). However, the rule of lenity does not apply merely from the "simple existence of some statutory ambiguity" because "most statutes are ambiguous to some degree." *Id.* (quoting *Muscarello v. United States,* 524 U.S. 125, 138 (1998)) (internal quotation marks omitted).

C. Second Amendment of the Constitution

Under the Second Amendment, "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. The Supreme Court has interpreted this amendment to protect an individual's right to keep and bear arms for self-defense. *See Dist. of Columbia v. Heller,* 554 U.S. 570, 595 (2008); *McDonald v. City of Chicago, Ill.,* 561 U.S.

742, 791 (2010). *New York State Rifle & Pistol Association, Inc. v. Bruen* set the standard for analyzing whether firearms regulation violates the Second Amendment. 142 S. Ct. 2111,2126 (2022). "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* To determine whether the Second Amendment covers an individual's conduct, courts review the plain text of the Second Amendment, which protects "the people" and their right to weapons "in common use" today for self-defense. *Id.* at 2134; *see also Heller,* 554 U.S. at 624-25 (finding that the Second Amendment protects only the sorts of weapons "in common use at the time" and "typically possessed by law-abiding citizens for lawful purposes"). If the Second Amendment presumptively protects the conduct, then the Government "must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation" for the regulation to be constitutional. *Bruen,* 142 S. Ct. at 2126.

III. ANALYSIS

A. The Superseding Indictment Sufficiently Alleges the Offenses.

Defendant argues that Counts 1-5 should be dismissed because the Indictment does not sufficiently allege that the devices at issue are machineguns or destructive devices. Mot. to Dismiss at 6-7, ECF No. 37. The Court disagrees. An indictment is sufficient as long as every essential element of the statute and essential facts of the offense are set forth. *Perry,* 757 F.3d at 171. Whether a particular firearm or device qualifies as a machinegun or destructive device is a question of fact to be developed at trial. *See Spirito,* 2020 WL 201643, at *2. Doing so at the dismissal stage

is premature, and the level of detail that Defendant argues for is not required.

For Count 1, the Indictment needs to allege only that Defendant received and possessed an unregistered firearm. 26 U.S.C. § 5861(d); *see United States v. Wright,* 991 F.2d 1182, 1188 (4th Cir. 1993). The Indictment states that Defendant "did knowingly receive and possess a firearm, namely a PPSH machinegun, which was not registered to the defendant in the National Firearms Registration and Transfer Record." Superseding Indictment at 1, ECF No. 28. The conduct in question occurred "on or about March 15, 2022, through on or about March 28, 2022, in Virginia Beach." *Id.* The allegations for Count 1 track the language of the statute and include relevant facts—namely time, place, and type of firearm. *See Perry,* 757 F.3d at 175. The Indictment sufficiently alleges Count 1.

For Count 2, the Indictment needs to allege only that Defendant unlawfully possessed or transferred a machinegun. 18 U.S.C. § 922(o). The Indictment states that Defendant knowingly possessed and transferred a machinegun—the PPSH machinegun. Superseding Indictment at 2, ECF No. 28. The Indictment further notes that the possession of the PPSH machinegun was unlawful because it was unregistered (as discussed under Count 1) and that the violation occurred "[o]n or about March 15, 2022, through on or about March 28, 2022, in Virginia Beach." *Id.* at 1-2. Like the allegations in Count 1, the allegations for Count 2 track the language of the statute and include relevant facts—namely time, place, and type of firearm. The Indictment sufficiently alleges Count 2.

For Counts 3 to 5, the Indictment needs to allege only that Defendant received and possessed an

unregistered destructive device. *See* 26 U.S.C. §§ 5845(a) (defining "firearm" as including destructive devices), 5861(d) (making it unlawful for any person to receive or possess an unregistered firearm). Title 26 U.S.C. Section 5845(f) defines "destructive device" to include any explosive, grenade, rocket with propellent charge of more than 1/4 ounce, mine, or similar device, or any combination of parts designed or intended for use in converting any device to a destructive device. 26 U.S.C. § 5845(f). Count 3 of the Indictment alleges that Defendant "did knowingly receive and possess a destructive device, namely a M79, 40 mm grenade launcher, which was not registered to the defendant in the National Firearms Registration and Transfer Record." Superseding Indictment at 2, ECF No. 28. Counts 4 and 5 allege the same but with respect to an M203, 40mm grenade launcher and two RPG-7 variant recoilless antitank projectors. *Id.* at 2-3. The violations all occurred on or about April 7, 2022 in Virginia Beach. *Id.* The allegations for Counts 3 to 5 track the language of the statute and state the time, place, and types of destructive devices Defendant allegedly possessed. The Indictment sufficiently alleges Counts 3 to 5. As such, the Court finds that the Indictment was sufficient to apprise Defendant of the charges against him and identify the essential elements of the crime charged.

B. The Statutes Are Not Unconstitutionally Ambiguous

Defendant next argues that the National Firearms Act (NFA) and Gun Control Act (GCA) are unconstitutionally vague under the Fifth Amendment because "a reasonably intelligent person [would not have] foresee[n] that the conduct charged in this case—the mere possession of freely available, non-functional

components—would be deemed criminal." Mot. to Dismiss at 8, ECF No. 37. Defendant further argues that because the statute is unconstitutionally vague, the Court should apply the rule of lenity and resolve any ambiguity in the criminal statute in favor of Defendant. *Id.* at 10. The Court disagrees.

Under 26 U.S.C. § 5845(b), the definition of "machinegun" includes any weapon that "can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger"; "any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun"; and "any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person." 26 U.S.C. § 5845(b). Under 26 U.S.C. § 5845(f), the definition of "destructive device" includes "any type of weapon . . . which will, or which may readily be converted to, expel a projectile by the action of an explosive or other propellant" and "any combination of parts either designed or intended for use in converting any device into a destructive device . . . and from which a destructive device may be readily assembled." 26 U.S.C. § 5845(f). The plain language of the statute unambiguously indicates that the possession of non-functional components of a machinegun or destructive device may fall under the statutory definitions of "machinegun" and "destructive device." *See, e.g., United States v. TRW Rifle 7.62X51mm Caliber, One Model 14 Serial 593006,* 447 F.3d 686, 688-89 (9th Cir. 2006) (noting that "readily" and "restored" both have plain and unambiguous ordinary meanings); *United States v. Drasen,* 845 F.2d 731, 737-38 (7th Cir. 1988) (finding fair warning that the National Firearms Act may apply to unassembled parts given its purpose of

regulating the manufacture, possession, and transfer of weapons); *United States v. M-K Specialties Model M-14 Machinegun,* 424 F. Supp. 2d 862, 869-70 (N.D.W. Va. 2006) (rejecting a vagueness challenge to 26 U.S.C. § 5845); *United States v. Whalen,* 337 F. Supp. 1012, 1018-19 (S.D.N.Y. 1972) (holding that the National Firearms Act is not unconstitutionally vague). Whether the devices that Defendant possessed actually fall under the definition of "machinegun" and "destructive device" is a question for the factfinder. The Court finds only that the statute is not unconstitutionally ambiguous and places a reasonable person on notice that the possession of components may subject the owner to regulations on "machineguns" or "destructive devices." Because the statute is not unconstitutionally ambiguous, the rule of lenity does not apply. *See George,* 946 F.3d at 645.

Further, the parties disagree over whether the weapons Defendant possessed were fully functional and complete. *Compare* Mot. to Dismiss at 6, ECF No. 37 ("The PPSH and other items in question were . . . destroyed, nonfunctional relics."), *with* Resp. in Opp'n at 2, ECF No. 43 ("[T]he weapons the Defendant possessed were fully functional and complete."). This is a question of fact to be developed at trial, and the Court will not make any factual findings on what Defendant actually possessed at this stage.

Additionally, Defendant's citation to *Gun Owners of America, Inc. v. Garland* is not persuasive. 19 F.4th 890 (6th Cir. 2021). *Garland* analyzes only whether the NFA is silent or ambiguous on the "precise question at issue—whether 'machinegun' includes bump-stock devices." *Id.* at 904. The Sixth Circuit raises this question as part of its *Chevron* analysis to determine the legitimacy of a Bureau of Alcohol, Tobacco,

Firearms, and Explosives (ATF) rule clarifying that bump-stock devices fall within the definition of "machinegun." *Id.* at 904-905. The Sixth Circuit's review of an ATF rule is not applicable to the instant case.

C. The Charges Against Defendant Do Not Violate the Second Amendment.

Defendant argues that the charges against him violate the Second Amendment based on the Supreme Court's decision in *Bruen.* 142 S. Ct. 2111 (2022). Defendant claims that the NFA and GCA are facially unconstitutional and are unconstitutional as applied to Defendant under *Bruen. See* Mot. to Dismiss at 15-17, ECF No. 37. The Court strongly disagrees with this argument.

The Second Amendment's individual right to bear arms is not unlimited. *Heller,* 554 U.S. at 626. Under the framework established in *Bruen,* the Second Amendment presumptively protects conduct covered by its plain text. *Bruen,* 142 S. Ct. at 2126. To determine whether this presumption of protection exists, the Supreme Court in *Bruen* looked to whether the individuals seeking the protection are part of "the people" whom the Second Amendment protects and whether the regulated weapons are weapons "in common use" today for self-defense. *Id.* at 2134. Assault weapons, large-capacity magazines, M-16 rifles, and other types of "weapons that are most useful in military service" are not weapons in common use and are not protected under the Second Amendment. *Kolbe v. Hogan,* 849 F.3d 114,136 (4th Cir. 2017) (quoting *Heller,* 554 U.S. at 627). In the instant case, the weapons in question—machineguns and destructive devices—are not weapons "in common use" and

thus fall outside of the Second Amendment's protection.

Like M16 rifles, machineguns are capable of fully automatic fire. *Id.* In fact, machineguns are, by definition, fully automatic firearms. 26 U.S.C. § 5845(b). Machineguns also share the military features of M-16 rifles and assault weapons that make them "devastating and lethal weapon[s] of war." *Hogan,* 849 F.3d at 136. In many respects, machineguns are even further from the definition of weapons "in common use" than M16 rifles, which already fall outside the Second Amendment's scope under *Heller.* 554 U.S. at 627. As such, machineguns are not weapons "in common use" and are not protected under the Second Amendment.

Destructive devices are also not weapons "in common use." *See United States v. Tagg,* 572 F.3d 1320, 1326 (11th Cir. 2009) (finding that pipe bombs, a type of destructive device, are not typically possessed by law-abiding citizens for lawful purposes). Based on statistics from the ATF, there were only 3.3 million registered destructive devices in the United States as of May 2021. *See* Firearms Commerce in the United States: Annual Statistical Update 2021 at 15-16, ATF (May 2021); *cf. Kolbe v. O'Malley,* 42 F. Supp. 3d 768, 788 (D. Md. 2014) (noting that assault weapons are likely not in common use because, accepting that there are 8.2 million assault weapons in civil stock, assault weapons represent no more than 3% of the civilian gun stock), *aff'd on other grounds, Hogan,* 849 F.3d at 136. Destructive devices are not typically possessed by law abiding citizens and are not protected under the Second Amendment. Because both machineguns and destructive devices are not weapons "in common use," the Second Amendment does not presumptively protect an individual's right to use these weapons.

Defendant's argument that the NFA and GCA are facially unconstitutional is unavailing.

With respect to Defendant's as-applied challenge, the Court declines to reach this question because the parties dispute whether the offense conduct involved assembled weapons. The Court cannot resolve this question at the motion to dismiss stage as the facts need to be further developed at trial.

D. Congress Has Not Exceeded Its Authority Under the Tax and Spend Clause.

Finally, Defendant briefly argues that Congress exceeded its authority under the Tax and Spend Clause. Mot. to Dismiss at 5-6, ECF No. 37. The Court disagrees. Many circuits have found that the NFA is constitutional under the Tax and Spend Clause, *see United States v. Wilson,* 440 F.2d 1068, 1069 (6th Cir. 1971) ("[T]he provisions of 26 U.S.C. § 5801 et seq . . . . are within both the taxing power and the commerce power of Congress.") (citation omitted); *United States v. Tous,* 461 F.2d 656, 657 (9th Cir. 1972) ("[26 U.S.C. § 5861] is a valid exercise of the power of Congress to *tax."); United States v. Cox,* 906 F.3d 1170, 1179 (10th Cir. 2018) ("[T]he NFA is a valid exercise of Congress's taxing power."); *Zwak v. United States,* 848 F.2d 1179, 1183 (11th Cir. 1988) (finding that taxes assessed pursuant to 26 U.S.C. §§ 5811 and 5821 are within the taxing power of Congress); *see also United States v. Aiken,* 787 F. Supp. 106, 108 (D. Md. 1992) (finding the prohibition on possessing an unregistered firearm under 26 U.S.C. § 5861(d) constitutional as a valid revenue measure), and the GCA was enacted under the Commerce Clause, *see United States v. Haney,* 264 F.3d 1161, 1171 (10th Cir. 2001) ("18 U.S.C. § 922(o) is constitutional and does not violate either the Second Amendment or the Commerce Clause."). Given the

weight of authority on this issue, the Court concludes that Congress has not exceeded its authority under the Tax and Spend Clause.

IV. CONCLUSION

For the forgoing reasons, Defendant Patrick Tate Adamiak's Motion to Dismiss Counts 1-5 of the Superseding Indictment (ECF No. 37) is DENIED. The Clerk is REQUESTED to forward a copy of this Order to all counsel of record.

IT IS SO ORDERED.

/s/
Arenda L. Wright Allen
United States District Judge

September 22, 2022
Norfolk, Virginia

APPENDIX G

[227] firing cartridges. And a cartridge consists of basically a cartridge case. In the rear of the cartridge case there's a primer. The cartridge case is filled with a propellant powder, and then he have a projectile or a bullet. Some people will refer to the whole cartridge as a bullet, but technically the built is the part of the cartridge that ends up going down the bore and out the barrel that does the damage.

Well, when you fire that, the weapon feeds that cartridge – it has a fixed firing pin – it fires the cartridge. The cartridge case acts somewhat like a gasket to seal the gas. The firing pin goes forward, you hit the primer, the primer ignites, it ignites the propellant powder charge. The propellant powder, you get a rapidly expanding column of gas which propels the bullet out of the barrel.

Well, now you have to get that cartridge, the fired cartridge case out of the weapon. And typically when the bolt comes back, that ejection port is where those fired cartridge cases will essentially flip out in succession. So you need an opening to get the cartridge case out of the weapon. And that's what that does.

But again, on the 2 of 7, the red marks, you know, probably the most critical one of those is the one that's through the trunnion area, which would be the third one from the left. That third red mark from the left on the bottom picture would be the, definitely would be the most critical area, because the trunnion [228] which is present in this receiver also locates and holds the rear of the barrel. So that would be the most critical cut.

But with the other cuts, one is in the back in the latch area. Another is slightly in front of the rear sight.

Then you have one up here on the front of the firearm directly at an angular orientation in front of the front sight. But those are the areas that are required to be cut.

And as far as machine gun destruction goes, that's been a pretty established procedure. If you wanted to find out just the general specifics of machine gun destruction you could Google ATF machine gun destruction on a smartphone. And you know, what will typically come up is something right off of our web page, and they'll have examples. I don't believe there's an example of a PPSh machine gun. They have about four or five different machine gun variants. They talk about destruction methods, general destruction methods, which include being completely crushed, melted, shredded or torch-cut in specified locations. And then they also I believe have recommendations about our office. If you have a question you can contact our office directly on that.

So you know, but this is, this is the standard method, you know, that for many years for PPSh-41s. You would be required to cut this part of the firearm in those four locations with a torch that removes – a cutting torch which removes at least a quarter inch of material. And if that's not done, say if you [229] just saw-cut that receiver in one area, it doesn't cease to be a machine gun at that point.

If you wanted to say, well, I don't want this thing to be a machine gun anymore, it would have to be cut in those four locations with a torch, or you would have to contact our office for a specific alternate form of destruction in writing, so. But this is the standard accepted method.

Q. Okay. In your examination on the gun that's regards to Counts 1 and 2, does it meet the definition of a machine gun?

A. Yes, sir. It never ceased being what it was: A machine gun.

Q. And –

A. Just because of one saw cut.

Q. To be a machine gun, how does a gun have to operate to be a machine gun?

A. Well, you can hit the machine gun definition several ways. You can either have a firearm which – and I have these definitions as well in my report.

It can be a weapon which shoots – is designed to shoot or can be readily restored to shoot automatically more than one shot with a single function of the trigger. It can be a frame or receiver of that firearm. It can be, you know, any part or a combination of parts designed and intended to convert a firearm into a machine gun, or it can be basically a combination of parts from which a machine gun can be assembled if they're under [230] the control of one person. So...

Q. Okay.

A. But you know, again, it's not required to physically shoot. You can have it – you know, if you look at this firearm, it's still designed to shoot. You know, it's still designed to shoot and it could be readily restored to shoot. It's not required, being a machine gun, that it must be shoot automatically as received.

Q. Okay. And a machine gun is a firearm, right?

A. Yes, sir, it is, under both the GCA and the National Firearm Act.

Q. Okay. And machine gun's a weapon too; is that correct?

A. Yes, sir. I mean, a PPSh was designed in Russia during World War II, PPSh-41. They made millions of them. They basically made them to defend themselves against advancing German troops. It's kind of an iconic Russian weapon of World War II. And they have been made in other countries. A number of other countries have manufactured them as well.

Q. This particular machine gun, let me show you...

I'm going to show you Exhibit 23. It's going to come up on your screen. Is that the machine gun that you examined?

A. Yes, sir.

Q. And there it appears to be all together; is that correct?

A. Well, the barrel assembly is out of the weapon. This firearm had a – the PPSh-41s were originally manufactured with [231] a – they were chambered for a 7.62x25 cartridge. This firearm essentially had an aftermarket barrel. It was about an inch and a half longer. It was threaded on the muzzle, and it was chambered for the 9x19 cartridge, which is actually probably easier to obtain at the present time in the United States.

In order to install that barrel, the barrel wouldn't – typically the barrel, I said, was about an inch and a half longer, usually. The PPSh standard barrels did not protrude through the barrel jacket at the end of the firearm. This one, you would have had to get the barrel seated in, you would have had to probably open up that opening slightly. You could have done it with a rat-tail file or round file, something like that to get the firearm

to accept the barrel. But it would have taken a slight bit of fitting to install the barrel on it.

Q. And this particular gun, did you ever test fire it?

A. Well, no, sir. We don't typically – in a firearm like this, you know, as far as altering evidence, that's something we wouldn't normally do unless it was specifically requested in a somewhat unusual circumstance.

You know, this firearm, to safely fire it I would have at least had to tack weld it together, I would have had to probably file a little bit in the front and fit – do what was required to fit the barrel in there to test fire it, and utilize one of our test-fire magazines as well. But again, that would be altering the evidence and it's not something we routinely do.

[232] Q. Having examined that gun and all its components, in your opinion, if you would test fire it and do all these things that you would need to do, would it fire as a machine gun?

A. Yeah. It would be consistent with similar firearms I've seen that were assembled, either tack-welded back together and things of that nature yes, sir.

THE COURT: This is going to be a good time for us to take our 15-minute break. So Officer Davis, please don't discuss your testimony with anybody, and we're going to come back at five till 4:00. And this is our break: Don't talk about the case until we come back.

(Jury left the courtroom.)

(Recess taken from 3:36 p.m. to 3:59 p.m.)

THE COURT: All right, Mr. Muhr. Thank you.

BY MR. MUHR:

Q. Mr. Davis, I have a few more things with you, please.

If a magazine, or like a clip in a machine gun like the one that we have there, isn't in there, does that make the gun sees to be a machine gun?

A. No, sir. It doesn't have any bearing on the classification of the firearm.

Q. Okay. And clips, are they interchangeable, like you could put one clip in? As long as it fits that gun you could put a different –

A. Generally – occasionally with manufacturing tolerances of

* * *

[239] A. Not for the barrel to be –

Q. Excuse me. It would have required some welding to the receiver?

A. Well, again, sir, as I indicated earlier, I've seen some firearms, even similar saw-cut firearms that people use Bondo or epoxy on. So I have seen very crude methods over the years used to reassemble firearms.

Q. Okay. But none of those methods appear to have been used here?

A. No, sir.

Q. Just so the ladies and gentlemen of the jury understand, I'm going to try to – that, that top part, that's the receiver, correct?

A. Yes, sir.

Q. And that's the part you say that ATF requires or recommends be cut into four pieces?

A. Well, it's the part of the firearm that has to be destroyed by an approved method for the machine gun to be considered destroyed.

Q. But just so it's clear, "destroyed" is a term of art or a legal term. This gun is not able to be fired in the condition it's in. It's got to be welded, put together, the barrel's got to be milled, all that has to be done before it could be fired?

A. Yes, sir. But that's not a part of classification as a machine gun.

[240] Q. That's not part of what you do, but just so I understand it, and the jury, you couldn't shoot this gun without doing some work to it?

A. You would have to do a slight bit of work to fire the weapon.

Q. Let me ask you this: Who can do that work? You can certainly do it, obviously?

A. Yeah.

Q. You've been doing this for 50 – not trying to age you here – you've been doing this a while?

A. Well, I mean, again, we – in examining criminal evidence, I see a wide variety of qualities of work. I've seen some people who were actually quite skilled, and I've seen others who were very unskilled. They would do very crude, unworkmanlike work. But it's the quality of the work – I've seen weapons exhibiting very crude worksmanship that would easily meet the various definitions of what that weapon might be. It's not a factor in classifying it. But it wouldn't take a great deal of skill to do this. You wouldn't have to be a

good welder to do this, a skilled welder. With things on the Internet, you could find all sorts of advice, things of that nature. It's, it wouldn't be a complicated process to make this weapon fire.

Q. Wouldn't be complicated for whom, sir?

A. For anyone enthusiastic and schooled in weapons, certainly.

Even amateurs. It's hard to say when you talk about skill [241] levels. I've seen unschooled people capable of very interesting things. Sometimes to the point where they'll do modifications or come up with a new machine gun conversion device, and while it's blatantly illegal, I have to admire the thought that went into it. And these were people that never had classic gunsmithing.

Q. But certainly you don't know, you don't know with any given person, when you get some evidence in to your office or your facility, one of the things you're looking at is the characteristics and how you classify it under the National Firearms Act.

A. That's my primary concern.

Q. Right. And one of the things that you look at, is it readily restorable or readily convertible or whatever the term is, correct?

A. It's one of the factors I might look on certain cases, yes, sir.

Q. But doesn't that by its nature imply you would have to know who was trying to do it?

A. I wouldn't agree with that, sir.

Q. Okay. You don't. So you think that if you have – I want to make sure it's clear. Your testimony is that in your analysis, you make no analysis about who it is

that would be restoring it or putting it together or converting it?

A. Not – no, sir. It's –

[242] Q. Okay.

A. – just whether it's readably restorable, yes.

Q. But again, I don't want to keep – by whom? Readily restorable by whom?

A. If the firearm itself is readily –

MR. MUHR: It's been asked and answered.

THE COURT: It has been asked and answered.

MR. WOODWARD: I'll move on.

THE WITNESS:

A. We're speaking of the firearm. Is the firearm readably restorable.

BY MR. WOODWARD:

Q. And one of the things that you said in your direct testimony that I didn't object to about you could go on the Internet and you could Google machine gun destruction and a bunch of stuff would pop up that shows various kind of weapons, correct?

A. ATF would – I believe when I Googled that it went right to ATF's recommendations.

Q. You recommended – I get that. And you would agree with me there's several kind of specific guns on there where it talks about what has to be done to, under the ATF's view of the world, destroy them, but the PPSh is not on there?

A. No, sir. But it does say to contact our office if you have any additional questions.

[243] Q. Okay.

A. And we do answer questions for the public.

Q. I understand that. But I mean let's – I don't want to – you know, the Browning 919's on there, correct?

A. 1919, correct.

Q. 1919. I stand corrected. An FAL, that's a machine gun, that's on there?

A. Yes, sir.

Q. Heckler & Koch's on there?

A. Yep.

Q. Several others on there?

A. Yes, sir.

Q. But this weapon, this device is not on there?

A. No, sir. We don't have copies of every single machine gun that's ever been produced on the website. It wouldn't be practical.

Q. And in fact, even what you do have up there says that there may be other means of destruction that are approved?

A. This you would have to ask our office for and get those in writing.

Q. That's not what it says on the Internet – I mean that might be true, but on the Internet it says there's other approved – or in your website, approved destruction methods?

A. I –

Q. Or do you know?

[244] A. I would have to read the exact quote on there. But again, we're available to answer any of those questions. And machine guns, again, have been a highly restricted item since 1934.

Q. Okay. You also offered some testimony at the beginning of your direct about something that I just didn't get about 1986. And I understand that's when the National Firearm Act passed.

A. No, sir.

Q. What is the significance of May 19th, 1986?

A. Well, the National Firearms Act passed in 1934.

Q. Okay.

A. And prior to – up until that time, up until May 19th of 1986 you were – you would have been able to – say if you wanted to construct a firearm, an NFA firearm, a machine gun -an easy example would be – now, the problem with exhibits such as this is, this is already a machine gun. You couldn't possess this and then register it. But just say I'll use another firearm as an example that might fall under this classification. Say with a semiautomatic AR-15-type rifle. It's a very common rifle in the United States today. The receivers of an M-16 or the machine gun variant have a slight bit of additional machining in order to accommodate a part, basically an automatic sear within the receiver. The semiautomatic variant doesn't have that. So a semiautomatic AR-15 rifle would be just that: A semiautomatic AR-15 rifle.

Prior to May 19th, 1986, an individual could have filed a [245] Form 1, done the fingerprints, the background check, that whole – all of that, got approval back to convert that firearm into a machine gun, and then they would have been able to do that

and put it on the Registry. But in May 19th of 1986, there were no new machine guns for civilian ownership. They basically froze that number at the number that was in possession at the time.

And I remember it very well, because in May of 1986 I was employed at Heckler & Koch, and Heckler & Koch made, in Chantilly, Virginia, they made many semi-automatic versions of machine guns. They had an HK-91, which was a semiautomatic version that utilized the different receiver as the H&K G3 that was mentioned in the destruction diagram. They had a number of firearms such as that. And I recall there was a licensed manufacturer, a Special Occupational Tax payer, and these were individuals that could legally make machine guns. He showed up at the Heckler & Koch plant with a letter of credit from a bank and a rented a U-haul truck and he purchased every single semiautomatic H&K firearm we had, to include two that I had, but I was hoping to purchase and they went. He even got a hold of those.

Q. He bought them before the rule came?

A. And he was making them into machine guns prior to that, the enactment, the cutoff date. So the value of those went up astronomically.

[246] Q. I think you told us in relation to that – and thank you for that, that testimony – that now these guns sell for 20 to $40,000, is that what – you know, a range. I understand there could be outliers, but...

A. Prior to this trial I did a search and I looked for some auction sites. And they, there were two PPSh-41-type machine guns that were listed that sold at auction within the last several years. These are fully transferable, registered guns, legal guns, if you will.

And one was approximately 20,000, the other was approximately $40,000.

Q. And how many pieces were they cut in? None?

A. No. They were intact firearms.

Q. One piece?

A. Fireable weapons, yes, sir.

Q. Let's talk about this standard that you've told the jury of torch cuts, three or four torch cuts. What is that based on?

A. Well, it's based on taking the firearm and making it to a point where it's considered to be destroyed.

Q. Can I interrupt you one second? Considered by whom?

A. Well, the authority to administer these laws has been delegated to ATF by the Attorney General. So we're the delegated authority to make these decisions.

Q. And with regard – I think I've already asked you this: With regard to the PPSh, that's not in writing anywhere?

A. It's – we've issued written documents on that over the [247] years, but importers will contact us, say we want to bring in these firearms, they'll be notified you have to do X, Y and Z to bring that firearm in.

Q. Let me ask a better question.

You said that it's considered destroyed by the ATF.

A. Yes, sir.

Q. And you all have been designated by the Congress to administer certain laws. With regard to the PPSh – I'm not talking about an importer – I'm

saying is there anywhere that I can go and look and see, and I've got a PPSh and it's cut in two pieces, that I can say, well, I need to cut this three more times for it not to be a machine gun?

A. I mean, as far as, as far as – I don't think we have a document that's public-facing, but again, it's a machine gun.

Q. Well, I understand you're saying that.

So, and let me ask you, what's the standard for that? Were there tests done?

Let me ask the question this way. So let me ask a general request first: Generally speaking, if something's in two pieces it's easier to put back together than if it's in three, correct? Generally?

A. Generally. And then the method of cut. A saw cut or a torch cut.

Q. And if something's in four pieces it's harder to put back than if it's in three?

[248] A. It would depend on where the cuts were.

Q. Okay. If it was in 10 pieces it would be harder to put back than if it was in four?

A. But again, you could put cuts in non-critical areas. If you put a torch cut through the trunnion area of, say, this design, it does quite a bit of destruction.

Q. But I'm just trying to understand, sir, you're an expert, your standard that you say the ATF has, because it's not published anywhere, for this device that my client is charged with, what is that based on? Have you – for example, have you cut a bunch of PPSh receivers into four pieces with a torch and had skilled gunsmiths try to put them back together and they

can't do it, so you say, okay, it's destroyed? I mean, is there any science to this or is it just an opinion?

A. Well, it's based on the opinion – this has been the policy since long before I was employed in 1993, but it's based on experienced people looking at the design of the weapon and saying where would these cuts do sufficient damage to this firearm that it would be reasonably difficult to bring that thing back into operable condition.

Q. But –

A. It's essentially, it's essentially, you know, the experts looking at the weapon, experienced people with a lot of weapons training looking at this firearm and saying where would – if we were to put these cuts in these locations – because again, you [249] know, with the exhibit I examined, the saw cut was placed in a position to do very little damage.

You know, as an example with the trunnion, if you run a torch cut through that trunnion, you're destroying the trunnion, you're destroying a very critical area of the receiver that would be much more difficult to repair than, say, a small saw cut in the area of the ejection port.

Q. I understand that, and I appreciate you testifying. It wasn't my question.

The standard. The four torch cuts. I want to make sure we're clear, I'm almost done: That's not based on any published scientific studies or any laboratory where you take things and try to weld them back together and see if they're really destroyed? Because the idea of destroying it is to make sure it can't function as a machine gun, right? That's what destroyed means?

A. Right. Yes, sir.

Q. Okay. So what you're saying is you agree that the bag of parts you got up there as Exhibit 121 or whatever it is, it can't function as a machine gun right now till something's done to it?

A. Well, yes, but that's not required for it to be classified as a machine gun.

Q. Well, but the destruction is – what you're talking about is – let me ask you this: If that receiver that you got had [250] been cut three times with a torch or four times with a torch you wouldn't be here, because you would think, well, nobody can put that back together and use it as a machine gun again, right? You couldn't come in and say that was still a machine gun?

A. Well, if it was destroyed to the standard, we would consider it to be destroyed. We wouldn't classify it as a machine gun.

In my report, where the four red lines were located, if that part of the firearm had been torch cut in those locations and it had been with a torch that removed at least a quarter inch of material, we would not have classified this as a machine gun had that been done.

Q. Okay. I got that. You wouldn't have classified that. But does that mean some skilled person couldn't have restored it to shoot? Doesn't mean that, does it? It just means you think that's good enough, and it's harder to do?

A. Well, everything, everything has a – if you have someone who's extremely skilled, I've seen people do – but this is, this is what ATF has determined is reasonable. It's a reasonable level of destruction to ensure that the firearm's not readily able to be brought

back into service. Could an extremely skilled person do it? Possibly –

Q. Okay. And –

A. – but again, they have to set a standard. What do we consider to be destroyed, what do we consider to be not [251] destroyed. And our experience has shown us that saw-cut receivers, especially only having one saw cut in a non-critical area, are quite easy to bring back into serviceable condition.

Q. I understand. You say that no matter what question I ask you, you say that. Get that.

So you would agree with me that it's not based on anything other than your opinion – the opinion of the ATF as an entity that four torch cuts does it, one saw cut doesn't; you agree that there could be somebody really skilled out in the world that could take a four-torch-cut receiver and restore it as a machine gun, but you don't think there's anybody in the world that's unskilled enough to be able to restore one with a saw cut?

A. Well, again, when they had these, made these original decisions, I was not employed at the Bureau of ATF. So these decisions were made prior to my arrival at ATF. It would be difficult for me to testify with great certainty exactly what went into those decisions.

Q. Right.

A. I can just say that, in my experience within the Bureau – but again, we're not talking about – you know, well, this person's more skilled so it's a machine gun for them; this person is less skilled, it's not a machine gun. We're not talking about the skill level of the individual, we're talking about the item and to the standard which that item is destroyed.

[252] Again, people have vast skill levels. And it really wouldn't be fair to say, oh, well, this person's very skilled, oh, well, it's this for them and it's not for them. We're talking about the level of destruction for the item, not for the person who might necessarily be tasked or to attempt to reassemble that item, if that makes sense.

Q. Well, it makes sense, but the whole purpose of trying to decide when something's destroyed is so it can't be used as a machine gun. That's what destroyed means, right, in you all's parlance: If it's destroyed, it's not a machine gun anymore.

A. Well, yes. I mean, preferably the standards of crushed, shredded, melted, totally melted would be preferable, but they determined that this was a sufficient level. If you put four torch cuts in those areas indicated, that was a sufficient level that we would no longer classify that item as a machine gun.

Q. Nobody ever wrote that down for a PPSh and put it on a website?

A. There's a number of models that aren't on the website.

Q. I asked you about – I asked you about the one that's the subject of this case.

A. I don't believe it's on the website, no, sir.

Q. You know it's not, right? It's not you don't believe it is, you know it's not.

A. Yeah, it's –

Q. It's not.

APPENDIX H

[439] PROCEEDINGS

(Commenced at 9:02 a.m. as follows:)

THE COURT: Good morning, everybody.

COURTROOM DEPUTY CLERK: The United States of America v. Patrick Tate Adamiak, Criminal Case No. 2:22cr47.

Mr. Muhr, Ms. Liu, is the government ready to proceed?

MR. MUHR: Government is ready. Good morning.

THE COURT: Good morning. Its good to see you three.

COURTROOM DEPUTY CLERK: Mr. Good, Mr. Woodward, is the defendant ready to proceed?

MR. GOOD: Defense is ready, good morning.

MR. WOODWARD: Good morning, Your Honor.

THE COURT: Good to see you three as well.

You guys can have a seat.

Before we bring the jury in, I'm going to affix to the record, Mr. Good, your proposed Instruction No. 44 on the Other Lawful Purpose. And I asked the parties to submit their positions by 5:00 yesterday. And so I also have affixed to the government's response and then your response to that. So I'm going to give it to Madam Lorraine so she can put it on the docket.

And then regarding that instruction I'm going to overrule it and not allow it because of the case of *United States v. Thompson Center*. In that case, the Supreme Court reviewed whether a parts kit for a pistol could be converted [440] into an NFA firearm. A

short-barreled rifle required the payment of a tax. And unlike the statutory definition of machine gun and/or destructive device that is involved in the present case, the definition of rifle did not include any combination of parts either designed or intended for use in converting any device to a rifle.

The Supreme Court reviewed whether the aggregation of parts could serve no useful purpose except for the assembly of a firearm because the parts alone do not suffice as a rifle under the NFA definition because the statutory definition of machine gun and destructive device differ from rifle to include any combination of parts.

I don't think the analysis in this case is applicable, and so therefore we're not going to read that instruction. But your objection's noted for the record.

MR. GOOD: Thank Your Honor.

THE COURT: And then I believe everybody has copies of the final jury instructions, one copy for the government and then two copies for the defense. So we'll bring the jury in for our instructions.

MR. WOODWARD: Your Honor, may I have one 30-second matter? I won't dirty up the podium.

I've spoken to Mr. Adamiak, and he, without putting what it is on the record my personal situation, he's fine, once the jury begins to deliberate, if I'm not here for the [441] deliberations. And Mr. Good's also fine with that, and I appreciate the Court's indulgence.

THE COURT: Okay. Mr. Adamiak, I'm not going to ask you to come back to the podium, but I remind you, you were placed under oath at the beginning of your trial, and did you hear what Mr. Woodward just said?

THE WITNESS: Yes, Your Honor, I did.

THE COURT: And you have no objections to him stepping out?

THE WITNESS: No, Your Honor.

THE COURT: Okay.

Thank you, Mr. Woodward. I had forgotten about that.

(Jury entered the courtroom.)

COURTROOM DEPUTY CLERK: Good morning, members of the jury. Please answer as your name is called.

(Roll called.)

COURTROOM DEPUTY CLERK: The United States of America v. Patrick Tate Adamiak, Criminal Case No. 2:22cr47.

Mr. Muhr, Ms. Liu, is the government ready to proceed?

MR. MUHR: The United States is ready. Good morning, Your Honor.

THE COURT: All right. Good morning. It's good to see you three.

COURTROOM DEPUTY CLERK: Mr. Good, Mr. Woodward, is the defendant ready to proceed?

APPENDIX I

[442] MR. WOODWARD: We are, Your Honor. Good morning.

MR. GOOD: Good morning, Your Honor. We are.

THE COURT: Good to see you all.

Ladies and gentlemen, nice to see you all.

As you remember, the government rested their case and they have no further witness testimony or documents. The defendant has elected not to produce any evidence, which is his right under the Constitution, so at this point we're going to review the law.

Each of you should have copies of the jury instructions there, so you're invited to follow along, and then once I'm done reviewing the law with you we're going to have our closing arguments.

All right. Jury Instruction No. 1. Introduction to the Final Charge, Province of the Court and the Jury.

Members of the jury, now that you've heard all of the evidence that is to be received in this trial, it becomes my duty to give you the final instructions of the Court as to the law that is applicable to this case. You should use these instructions to guide you in your decision.

All of the instructions of law given to you by the Court, those given to you at the beginning of the trial, those given to you during the trial and these final instructions, must guide and govern your deliberations. It is your duty as jurors to follow the law as stated in all of the instructions of the [443] court and to apply these rules of law to the facts as you find them to be from the evidence received during the trial.

Counsel will quite properly refer to some of the applicable rules of law in their closing arguments to

you. If, however, any difference appears to you between the law as stated by counsel and that as stated by the Court in these instructions, you, of course, are to be governed by the instructions given to you by the Court.

You are not to single out any one instruction alone as stating the law, but must consider the instructions as a whole in reaching your decisions. Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base any part of your verdict upon any other view or opinion of the law than that given in these instructions of the Court, just as it would be a violation of your sworn duty as the judges of the facts to base your verdict upon anything but the evidence received in this case.

You were chosen as jurors for this trial in order to evaluate all of the evidence received and to decide each of the factual questions presented by the allegations bought by the government in the indictment and the plea of not guilty by the defendant.

In resolving the issues presented to you for decision [444] in this trial, you must not be persuaded by bias, prejudice or sympathy for or against any of the parties to this case or by any public opinion. Justice through trial by jury depends upon the willingness of each individual juror to seek the truth from the same evidence presented to all the jurors here in the courtroom, and to arrive at a verdict by applying the same rules of law as now being given to each of you in these instructions of the Court.

No. 2. Judging the Evidence. There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any

reasonable and careful person would deal with any very important question that must be resolved by examining facts, opinions and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case. Use the evidence only for those purposes for which it has been received, and give such evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the defendant be proved guilty beyond a reasonable doubt, say so. If not proved guilty beyond a reasonable doubt, say so.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything other that the evidence received in the case and the instructions of the [445] Court. Remember as well that the law never imposes upon a defendant in a criminal case a burden or duty of calling any witnesses or producing any evidence, because the burden of proving guilty beyond a reasonable doubt is always with the government.

No. 3. Evidence Received in the Case, Stipulations, Judicial Notice and Inferences Permitted.

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them, all exhibits received in evidence, regardless of who may have produced them, all facts which may have been agreed to or stipulated, and all facts and events which may have been judicially noted.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you must accept the stipulation as evidence and accord that fact was proved.

If the Court declares that it has taken judicial notice of some fact or event, you may accept the Court's declaration as evidence and regard as proved the fact or event which has been judicially noted.

Any proposed testimony or proposed exhibit to which an objection was sustained by the Court, and any testimony or exhibit ordered stricken by the Court, must be entirely disregarded by you.

Anything you may have seen or heard outside the [446] courtroom is not evidence and must be entirely disregarded.

Questions, objections, statements and arguments of counsel are not evidence in the case unless made as an admission or stipulation of fact.

You are to base your verdict only on the evidence received in the case. In your consideration of the evidence received, however, you are not limited to the bald statements of witnesses or to the bald assertions in the exhibits. In other words, you are not limited solely to what you see and hear as the witnesses testify or as the exhibits are admitted. You are permitted to draw from the facts which you have found been proved such reasonable inferences as you feel are justified in light of your experience and your common sense.

No. 4. Direct and Circumstantial Evidence.

There are two types of evidence which are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case.

[447] Five. Inferences from the Evidence.

Inferences are simply deductions or conclusions which reason and common sense lead the jury to draw from the evidence received in the case.

No. 6. Jury's Recollection Controls.

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which is should control during your deliberations and not the statements of the Court or of counsel. You are the sole judges of the evidence received in this case.

No. 7. The Question is Not Evidence.

The questions asked by a lawyer for either party to this case are not evidence. If a lawyer asks a question of a witness which contains an assertion of fact, therefore, you may not consider the assertion by the lawyer as any evidence of that in fact. Only the answers are the evidence.

Eight. Presumption of Innocence, Burden of Proof, and Reasonable Doubt.

The law presumes the defendant to be innocent of a crime, thus, a defendant, although accused of crimes in the superseding indictment, begins the trial with a clean state, with no evidence against him. The law permits nothing but legal evidence presented before the jury and Court to be considered in support of any charge against the defendant. The presumption of

[448] innocence alone, therefore, is sufficient to acquit the defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all of the evidence in the case.

It is not required that the government prove guilt beyond all possible doubt, the test is one of reasonable doubt. The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

The burden of proof is upon the prosecution to prove guilt beyond a reasonable doubt, and this burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The defendant is not even obligated to produce evidence by cross-examining the witnesses for the government. So, if the jury, after careful and impartial consideration of all of the evidence in the case, has a reasonable doubt that the defendant is guilty of a charge, it must acquit.

Nine. Consider Each Count Separately.

A separate crime is charged in each count of the superseding indictment. Each charge and the evidence pertaining to it should be considered separately by the jury. The fact that you may find the defendant guilty or not guilty as to one of the counts should not control your verdict as to any other count.

[449] No. 10, Objections and Rulings.

Testimony and/or an exhibit can be admitted into evidence during a trial only if it meets certain criteria or standards. It is the sworn duty of the attorney on each side of the case to object when the other side offers testimony or an exhibit which that attorney

believes is not properly admissible under the rules of law. Only by raising an objection can a lawyer request and then obtain a ruling from the Court on the admissibility of the evidence being offered by the other side. You should not be influenced against an attorney or his or her client because the attorney has made an objection.

Do not attempt, moreover, to interpret my rulings on objections as somehow indicating how I think you should decide this case. I am simply making a ruling on a legal question regarding that particular piece of testimony or exhibit.

11. Court's Questions to Witnesses.

During the course of a trial I may occasionally ask questions of a witness. Do not assume that I hold any opinion on the matters to which my questions may relate. The Court may ask a question simply to clarify a matter, not to help one side of the case or hurt the other side. Remember at all times that you as jurors are the sole judges of the facts in this case.

No. 12. The Indictment Is Not Evidence.

An indictment is only a formal method used by the government to accuse a defendant of a crime. It is not evidence [450] of any kind against the defendant. The defendant is presumed to be innocent of the crimes charged. Even though the superseding indictment has been returned against the defendant, the defendant begins this trial with absolutely no evidence against him. The defendant has pled not guilty to the superseding indictment and therefore denies that he is guilty of the charges.

13. Opinion Evidence - The Expert Witness.

The Rules of Evidence ordinarily do not permit witnesses to testify as to their own opinions or their own conclusions about important questions in the trial. An exception to this rule exists as to those persons who are described as expert witnesses. An expert witness is someone who, by education or by experience, may have become knowledgeable in some technical, scientific or very specialized area. If such knowledge or experience may be of assistance to you in understanding some of the evidence or in determining a fact, an expert witness in that area may state an opinion as to a matter on which he or she claims to be an expert.

You should consider each expert opinion received in evidence in this case and give it such weight, if any, as you may think it deserves. You should consider the testimony of expert witnesses just as you consider other evidence in this case. If you decide that the opinion of an expert witness is not based upon sufficient education or experience, or if you [451] should conclude that the reasons given in support of the opinion are not sound, or if you should conclude that the opinion is outweighed by other evidence, you may disregard the opinion in part or in its entirety. As I have told you several times now, you, the jury, are the sole judges of the facts of this case.

14. Credibility of Witnesses.

You as jurors are the sole and exclusive judges of the credibility of each of the witnesses called to testify in this case, and only you determine the importance or the weight, if any, that their testimony deserves. After making your assessment concerning the credibility of

a witness, you may decide to believe all of that witness's testimony, only a portion of it, or none of it.

In making your assessment of that witness, you should carefully scrutinize all of the testimony given by that witness, the circumstances under which each witness has testified, and all of the other evidence which tends to show whether a witness, in your opinion, is worthy of belief.

Consider each witness's intelligence, motive to falsify, state of mind and appearance and manner while on the witness stand. Consider the witness's ability to observe the matters as to which he or she has testified, and consider whether he or she impresses you as having an accurate memory or recollection of these matters.

Consider also any relation a witness may bear to [452] either side of the case, the manner in which each witness might be affected by your verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelief or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon human experience. In weighing the effect of a discrepancy, however, always consider whether it pertains to a matter of importance or an insignificant detail, and consider whether the discrepancy results from innocent error or from intentional falsehood.

After making your on judgment or assessment concerning the believability of a witness, you can then

attach such importance or weight to that testimony, if any, that you feel it deserves. You will then be in a position to decide whether the government has proven the charges beyond a reasonable doubt.

15. Effect of Defendant's Decision Not To Testify.

The defendant in a criminal case has an absolute right under our Constitution not to testify. The fact that a defendant did not testify must not be discussed or considered in any way when deliberating and in arriving at your verdict. No inference of any kind may be drawn from the fact that a [453] defendant decided to exercise his or her privilege under the Constitution and did not testify. As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or of producing any evidence.

16. "On or About" Explained.

The superseding indictment charges that the offenses alleged were committed on or about certain dates. Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on dates reasonably near the dates alleged, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

17. "Knowingly" defined.

The term "knowingly" as used in these instructions to describe the alleged state of mind of the defendant means that he was conscious and aware of his actions, realized what he was doing or what was happening around him, and did not act because of ignorance, mistake or accident.

18, "Willfully" defined.

Term "willfully" as used in these instructions to describe the alleged state of mind of the defendant means that he knowingly performed an act deliberately and intentionally as contrasted with accidentally, carelessly or unintentionally.

19. Proof of Knowledge or Intent.

The intent of a person or the knowledge the person [454] possesses at any given time may not ordinarily be proved directly, because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during the trial.

Twenty. Proof May Be Disjunctive.

The Court instructs the jury that, although the superseding indictment may charge the defendant with committing an offense in several ways using conjunctive language; that is, "and," it is sufficient if the government proves the offense in the disjunctive; that is, "or."

That is to say, the jury may convict on a unanimous finding of any of the elements of a conjunctively charged offense. Therefore, I instruct you that it is not

necessary for the government to prove that the defendant did each of those things named in that particular count of the indictment, it is sufficient if the government proves beyond a reasonable doubt that the defendant did one of the alternative acts as charged, [455] as long as you all agree that the same particular alternative act was committed by the defendant and that every element of the offense has been proven beyond a reasonable doubt.

21. Deliberate Ignorance.

The government may prove that the defendant acted knowingly by proving beyond a reasonable doubt that this defendant deliberately closed his eyes to what would otherwise have been obvious to him. No one can avoid responsibility for a crime by deliberately ignoring what is obvious. A finding beyond a reasonable doubt of an intent of the defendant to avoid knowledge or enlightenment would permit the jury to find knowledge. Stated another way, a person's knowledge of a particular fact may be shown from a deliberate or intentional ignorance or deliberate or intentional blindness to the existence of that fact. It is, of course, entirely up to you as to whether you find any deliberate ignorance or deliberate closing of the eyes and any inferences to be drawn from any such evidence.

You may not conclude that the defendant had knowledge, however, from proof of a mistake, negligence, carelessness or a belief in an inaccurate proposition.

22. The Nature of the Offenses Charged, Counts 1, 3, 4 and 5.

Count 1. Count 1 of the superseding indictment charges that on or about March 15th, 2022 through on or about [456] March 28, 2022, in Virginia Beach,

within the Eastern District of Virginia, the defendant, Patrick Tate Adamiak, did knowingly receive and possess a firearm; namely, a PPSh machine gun which was not registered to the defendant in the National Firearms Registration and Transfer Record as required by Title 26 United States Code, Section 5841, in violation of Title 26 United States Code, Sections 5841, 5845, 5861(d) and 5871.

Count 3. Count 3 of the superseding indictment charges that on or about April 7, 2022, in Virginia Beach, within the Eastern District of Virginia, the defendant, Patrick Tate Adamiak, did knowingly receive and possess a destructive device; namely, a M79 40mm grenade launcher, which was not registered to the defendant in the National Firearms Registration and Transfer Record as required by Title 26 United States Code, Section 5841, in violation of Title 26 United States Code, Sections 5841, 5845, 5861(d) and 5871.

Count 4. Count 4 of the superseding indictment charges that on or about April 7, 2022, in Virginia Beach, within the Eastern District of Virginia, the defendant, Patrick Tate Adamiak, did knowingly receive and possess a destructive device; namely, a M203 40mm grenade launcher, which was not registered to the defendant in the National Firearms Registration and Transfer Record as required by Title 26 United States Code, Section 5841, in violation of Title 26 United States Code, Sections 5841, 5845, 5861(d) and 5871.

[457] Count 5 of the superseding indictment charges that on or about April 7, 2022, in Virginia Beach, within the Eastern District of Virginia, the defendant, Patrick Tate Adamiak, did knowingly and unlawfully receive and possess two destructive devices; namely,

two RPG-7 variant recoilless anti-tank projectors which were not registered to the defendant in the National Firearms Registration and Transfer Record as required by Title 26 United States Code, Section 5841, in violation of Title 26 United States Code, Sections 4841, 5845 – excuse me. 5841, 5845, 5861(d), and 5871.

23. The Statute Defining the Offenses Charged in Counts 1, 3, 4 and 5.

The relevant statute under this subject is called the National Firearms Act, which provides that;

It shall be unlawful for any person to receive or possess a firearm that is not registered to him in the National Firearms Registration and Transfer Record.

24. The Elements of the Offenses Charged, Counts 1, 3, 4 and 5.

In order to sustain its burden of proof for the crime of receiving or possessing an unregistered firearm as charged in Counts 1, 3, 4 and 5 of the superseding indictment, the government must prove the following three essential elements beyond a reasonable doubt:

No. 1. That on or about the date alleged in the [458] superseding indictment for Count 1, the defendant knowingly received or possessed a machine gun, and for Counts 3, 4 and 5 the defendant knowingly received or possessed a destructive device;

No. 2, that the defendant had knowledge that what he was possessing was a firearm;

No. 3, that the firearm was not registered to the defendant in the National Firearms Registration and Transfer Record.

It does not matter whether the defendant, Patrick Tate Adamiak, knew that the firearm was not registered or had not -or had to be registered.

No. 25. "Firearm" defined.

Section 5845(a), Title 26 of the United States Code, enumerates many different definitions of what a firearm is. In pertinent part, Section 5845(a) provides that the term "firearm" also means (6) a machine gun and (8) a destructive device.

You do not have to find that the firearm was loaded or that it was operable at the time of the offense. The government does not have to prove that the defendant ever fully assembled the firearm or test-fired the firearm for it to be considered a firearm.

26. "Machine gun" defined.

Section 5845(b) of Title 26 of the United States Code provides in pertinent part, that:

[459] The term "machine gun" means any weapon which shoots, was designed to shoot, or can be readily restored to shoot automatically more than one shot without manual reloading by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, and any part designed and intended solely and exclusively, or a combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled, if such parts are in the possession or under the control of a person.

27. "Destructive device" defined.

Section 5845(f) of Title 26 of the United States Code provides in pertinent part, that the term "destructive device" means, No. (1), any explosive, incendiary or

poison gas (A) bomb, (B) grenade, (C) rocket, having a propellant charge of more than four ounces, (D), missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device.

"Destructive device" also means (2) any type of weapon which by any other name which will or which may be readily converted to expel a projectile by action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one half inch in diameter except a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes and (3) any [460] combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety or similar device, surplus ordnance sold, loaned or given by the Secretary of the Army pursuant to the provisions of Section 7684(2), 7685, or 7686 of Title 10 United States Code, or any other device which the Secretary finds is not likely to be used as a weapon or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

28. Receipt or Possession of a Firearm.

Under Section 5861(d), the term "firearm" has a very specific meaning. In this case, the government must prove that the object the defendant received or

possessed was, for Count 1, a machine gun, and for Counts 3, 4 and 5, a destructive device.

In order to qualify as a firearm under the statute, the firearm must have either been in operating condition or could readily have been put in operating condition.

To "receive" means to acquire or to obtain possession of a item, whether such receipt is actual or constructive, sole or joint. Receipt of a firearm may be shown circumstantially by [461] proving possession. A person who knowingly has direct physical control over a thing at a given time is then in actual possession of it.

To "possess" means to have something within your control. This does not necessarily mean that you must hold it physically; that is, have actual possession of it. As long as the firearm is within your control, you possess it. If you find that the defendant had actual possession or that he had the power and intention to control the firearm, even though it may have been in the physical possession of another, then you may find that the government has proved possession.

The law recognizes that possession may be sole or joint. If the defendant alone possesses a firearm, that is sole possession. If the defendant jointly with others possesses a firearm, that is joint possession.

Proof of ownership is not required, nor is the government required to prove that at that time of the receipt, possession or transport the defendant knew that he was breaking the law. It is sufficient to satisfy this element if you find that the defendant possessed the firearm voluntarily and not by accident or mistake.

29. Knowing Receipt Or Possession.

A person is knowingly in receipt or possession if his receipt or possession occurs voluntarily and intentionally and not because of mistake or accident. The defendant may not be [462] convicted of receipt or possession of a firearm if he did not intend to receive or possess it. In addition, the government must prove that the defendant knew that the device he received or possessed had characteristics that make it subject to regulation as a firearm, as I just defined that term for you.

30. Firearm Was Not Registered To The Defendant.

The evidence in this case contains a certificate showing that after diligent search of the National Firearms Registration and Transfer Record, no record was found that the firearm that the government claims was involved in this case was registered to the defendant. However, you the jury, as the finder of facts, will make the final determination whether the government has proven beyond a reasonable doubt the non-registration of the firearm. The government does not have to prove that the defendant knew that the law required him to register the firearm or that it was not so registered.

31. The Nature of the Offense Charged, Count 2.

Count 2 of the superseding indictment charges that on or about March 15, 2022, through on or about March 28, 2022, in Virginia Beach, within the Eastern District of Virginia, the defendant, Patrick Tate Adamiak, did knowingly possess and transfer a machine gun; that is, a PPSh machine gun, in violation of Title 18 United States Code, Section 922(o).

32, The Statute Defining the Offense Charged in Count 2.

[463] The relevant statute on the subject is Section 922(o) of Title 18 of the United States Code, which provides in pertinent part:

It shall be unlawful for any person to transfer or possess a machine gun.

33. The Elements of the Offense Charged in Count 2.

In order to prove the defendant guilty of unlawful possession and transfer of a machine gun as charged in Count 2 of the superseding indictment, the government must prove each of the following elements beyond a reasonable doubt:

No. 1, that the defendant possessed or transferred a firearm as described in the superseding indictment; that is, a PPSh machine gun.

Second, that the firearm the defendant possessed or transferred was a machine gun as I have defined for you.

And No. 3 – as I will define for you – and the defendant acted knowingly.

33. First Element. Possession and Transfer of a Firearm.

The first element the government must prove beyond a reasonable doubt is that the defendant possessed or transferred a firearm as alleged in the superseding indictment.

To "possess" means to have something within a person's control. This does not necessarily mean that the defendant must hold it physically; that is, have actual possession of it. As [464] long as the firearm is

within the defendant's control he possesses it. If you find that the defendant either had actual possession of the firearm or that he had the power and intention to exercise control over it, even though it was not in his physical possession, you may find that the government has proven possession. Proof of ownership of the firearm is not required.

35. Second Element. Machine gun.

The second element the government must prove beyond a reasonable doubt is that the firearm the defendant possessed or transferred was a machine gun.

"Machine gun" is defined in the statute as any weapon that shoots, is designed to shoot, or can be readily restored to shoot automatically more than one shot without manual reloading by a single function of the trigger.

A "trigger" is any mechanism used to initiate the firing sequence.

The term "machine gun" also includes the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or a combination of parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

36, the third element, Defendant Acted Knowingly. The third element the government must prove beyond a [465] reasonable doubt is that the defendant acted knowingly. And to satisfy this element, you must find that the defendant possessed or transferred the machine gun. This means that he possessed or

transferred the machine gun purposefully and voluntarily, not by accident or mistake.

In addition, the government must prove that the defendant knew that the weapon he possessed or transferred had characteristics that made it subject to regulation as a machine gun as I have defend that term for you. However, the government is not required to prove that the defendant knew he was breaking the law.

37. Caution: Punishment.

I caution you, members of the jury, that you are here to determine the guilt or innocence of the accused from the evidence in the case. A defendant is not on trial for any act or conduct or offense not alleged in the superseding indictment. Neither are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

Also, the punishment provided by law for the offenses charged in the superseding indictment is a matter exclusively within the province of the Court or the judge, and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of those accused.

38. Verdict, Election Of Foreperson, Duty to [466] Deliberate, Unanimity, Punishment, Form of Verdict and Communications with the Court.

Upon retiring to your jury room to begin your deliberations, you must elect one of your members to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

Your verdict must represent the collective judgment of the jury. In order to return a verdict, it is necessary that each juror agree to it. Your verdict, in other words, must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with one another with the view towards reaching an agreement, if you can do so without violence to individual judgment.

Each of you must decide the case for himself and herself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors.

In the course of your deliberations, do not hesitate to reexamine your own views and to change your opinion if convinced it is erroneous. Do not surrender your honest conviction, however, solely because of the opinion of your fellow jurors or for the mere purpose of thereby being able to return a unanimous verdict.

Remember at all times that you are not partisans, you are judges, judges of the facts of the case, and your sole [467] interest is to seek the truth from the evidence received during the trial.

Your verdict must be based solely on the evidence received in the case. Nothing you've seen or read outside of court may be considered. Nothing that I have said or done during the course of this trial is intended in any way to somehow suggest to you what I think your verdict should be. Nothing said in these instructions, and nothing in any form of verdict, is to suggest or convey to you in any way or manner any intimation as to what verdict I think you should return. What the verdict shall be is the exclusive duty and responsibility of you, the jury. As I've told you many times. You are the sole judges of the facts.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court and should never be considered by the jury in any way in arriving at an impartial verdict as to the offenses charged.

A form of verdict has been prepared for your convenience, and it will be back in the jury room. It's very simple. It says Jury Verdict Form. Then it says, I/We the jury and the Defendant, Patrick Tate Adamiak, in Count 1, with respect to Count 1, receive and possess an unregistered firearm we find the defendant, Patrick Tate Adamiak, guilty or not guilty.

[468] Count 2. With respect to Count 2, unlawful possession and transfer of a machine gun, we find the defendant, Patrick Tate Adamiak, guilty or not guilty.

Count 3. With respect to Count 3, receive and possess and unregistered destructive device, we find the defendant, Patrick Tate Adamiak, guilty or not guilty.

Count 4. With respect to Count 4, receive and possess an unregistered destructive device, we find the defendant patrick Tate Adamiak, guilty or not guilty.

Count 5. With respect to Count 5, receive and possess an unregistered destructive device, we find the defendant, Patrick Tate Adamiak, guilty or not guilty.

It has a caption of the case, United States v. Patrick Tate Adamiak, Criminal No. 2:22cr47, and a place for the date and then a place for the foreperson's signature.

You will take this form to the jury room, and when you have reached unanimous agreement as to your verdict, you will have your foreperson write the verdict

form, date and sign it, and then return with the verdict to the courtroom.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note signed by your foreperson through Mr. White. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury concerning the evidence, your opinions, or [469] the deliberations other than in writing or orally here in open court.

Bear in mind also that you are never to reveal to any person, not even to the Court, how the jury stands, numerically or otherwise, on the question of whether or not the government has sustained its burden of proof until after you have reached a unanimous verdict.

All right. Now I think what we probably want to do is have a break before we have our arguments. So let's have a 15-minute break, and we'll start at 10:15 with the government's closing and then the defendant's closing, and then the government's rebuttal if they have a rebuttal.

(Jury left the courtroom.)

(Recess taken from 9:55 a.m. to 10:21 a.m.)

THE COURT: All right. Ladies and gentlemen, we'll first hear from the government, their closing argument.

MR. MUHR: May it please the Court, Counsel.

Good morning, ladies and gentlemen of the jury. Just in case you forgot, my name's Bill Muhr. I'm going to present a closing argument to you today. And the way it's going to proceed is we're going to go through the indictment and each of the counts. Each of them has

an element, as you saw the judge read those out to you on each of the counts, and then we're going to compare those elements with the evidence that we presented today in order to show to you that we have proven them

* * *

[523] deliberate in this case.

(Jury left the courtroom.)

THE COURT: Before we recess, anything from the government?

MR. MUHR: Just for clarification, can we leave the building at 1:00 to 2:00?

THE COURT: Yeah, you can.

MR. MUHR: Okay. Thank you.

THE COURT: Absolutely. And then make sure all your exhibits are proper.

MR. MUHR: We will, Your Honor. We'll check with Madam Clerk.

THE COURT: And Mr. Woodward, anything from you?

MR. WOODWARD: No, Your Honor. In terms of the exhibits, we checked them all except the ones that are in the paper bag. We need to take like two minutes and go through those. I think we went over all the rest of them this morning.

THE COURT: Whatever is good.

And we'll see you all when we see you all.

(Recess taken from 11:58 a.m. to 2:14 p.m.)

THE COURT: All right. Ladies and gentlemen, we've been told that you have a verdict, and Jury Foreperson,

sir, you can give that to Mr. White, please. We'd appreciate it.

COURTROOM DEPUTY CLERK: Would the defendant please stand and face the jury?

APPENDIX J

JA2308

[404] documents?

MR. MUHR: We have no more witnesses to present, Your Honor, and no more stipulations or other documents to admit.

THE COURT: All right. Is the government resting?

MR. MUHR: I'm sorry, Your Honor?

THE COURT: Is the government resting?

MR. MUHR: Yes, Your Honor.

THE COURT: All right.

Ladies and gentlemen, we have some administrative matters that we have to take up outside of your presence, so we're going to ask you to go back to the jury room and we will call you back as soon as we're able.

(Jury left the courtroom.)

THE COURT: All right. Mr. Good, Mr. Woodward, any motions?

MR. WOODWARD: Yes, Your Honor. Pursuant to Rule 29 of the Federal Rules of Criminal Procedure, I would make a motion to dismiss all charges as not being supported by the law and the evidence. I don't know if the Court wants me to launch into argument on each one or you want to defer them, but I want to make that record.

THE COURT: You can argue Counts 1 through 5.

MR. WOODWARD: Your Honor, Counts 1 and 2 relate to the same device, obviously. Count 1 is the receipt of the device, Count 2 is the transfer of the

device. This is the [405] device that was purchased by the undercover agent.

I realize the standard at this level and what the evidence has been, but as the Court's aware, these cases based on *Staples* and *Thompson Arms,* they have a pretty high burden of showing the knowledge of the defendant that the device had all the characteristics of a regulated firearm. I don't think they have presented any evidence that shows that Mr. Adamiak knew that, or even circumstantially knew that a receiver that was cut into two pieces met the definition of a machine gun. And that's what they have to prove. They don't have to just prove that it met the definition, they have to prove he knew it met the definition.

And these cases, I've had several of them, different – there's a thin walk that's done between that standard and ignorance of the law. So ignorance of the law would be "I knew it was a machine gun, but I didn't know it was against the law to have a machine gun." That's ignorance of the law. That was a motion filed and the Court...

But they have not proven on that device with any evidence that he knew that, in the state it was in, was a machine gun. And I understand they've put on some stuff that he knows a lot about guns, he collects guns, he has gun parts, he sells gun parts. But I would tell the Court that's simply not in the record. I mean, his knowledge, even circumstantially or inferentially at this level of proceedings.

[406] We next get to Counts 2 and 3, Your Honor, which are the two – the M203 and the M207 – excuse me, I stand corrected. 3 and 4. 3 and 4 are the two destructive devices. I misspoke.

1 and 2 is the PPSh, 3 and 4 are the – one of them is the M203, one is the M79. Both of those items were purchased, the receivers were purchased legally through a federally licensed firearm dealer. There's no dispute about that. He had them locked in a gun safe.

In the search that was done, there were barrels that would, that were 40mms that were seized and would fit them. There were also barrels that were not 40mms that would fit them. And again, the key point is have they proven that Mr. Adamiak knew that those things. *Thompson Arms* stands for the proposition that when a firearm is – when something is a federally regulated firearm due to a combination of parts, the United States has the burden to prove beyond a reasonable doubt that the parts as kept by the defendant would have no use or utility except to assemble a regulated firearm.

When you overlay that on *Staples* where they – he has to know that it's a destructive device. And you take the fact that the evidence is, no evidence he ever attached the barrels. There's no discussion from him that he knew those barrels, kept separately from the receivers, constituted a destructive device.

I think we've certainly presented evidence through the [407] fact that everybody that's testified, both the experts and non, has said those receivers in and of themselves, when they're purchased through a federally licensed firearm dealer, are not destructive devices, it's only when you marry them up with the barrel. And the evidence in this case is that that never happened with him. They did it in West Virginia, but they have not proven or presented any evidence that Mr. Adamiak ever did that.

So I think when you Court looks at both *Thompson* and *Staples,* the confluence of that, the government just, they haven't put in a statement of any kind or any evidence that he knew that. They presented a lot of evidence about his training with military guns. And one way you would know the law would be if you were trained in the law. Obviously the agents are all trained in the law. They put it in their reports. I was struck by the fact when they called Senior – or Master Chief, he didn't say he was trained in the National Firearms Act or trained in the Tax Code, you know. Some of the charges are under 28 U.S.C., which is the Tax Code section.

So again, I would submit to the Court that they just don't have any evidence of that. They have an argument. They might be able to say we think he knew, but they don't have any evidence.

Finally, Your Honor, on the two devices that are the subject of Count 5, it's clear, you know, it's clear that he had [408] no way to use them. They did not – they were – they didn't have a triggering mechanism. They didn't have a firing pin. They didn't have a number of pieces that were required to discharge them.

Now, I understand he doesn't have to discharge them. But again, if you look, if you look at *Thompson Center Arms,* a combination of parts, when assembled that become a regulated firearm, he didn't even have the parts. He had no parts.

They – the guy was candid, he got those parts out of the ATF –I call it library – the ATF, whatever they have up there, I'm sure they have all kinds of gun parts.

The other thing that's the underlaying of all of this that kind of relates to all of those is this, relates to all

of this is "readily convertible", "readily restorable" and all of that. And again, there's no evidence that the – the best evidence of what you know how to do is what you do. The best evidence of your intent is what you do. There's a jury instruction that says that. And in this case, there's not a scintilla of evidence that Mr. Adamiak ever welded anything together, ever told anybody else to weld anything together, never told anybody he knew how to weld things together, or welding them together would put them back in operable condition and make them a machine gun.

So the government's theory seems to be that the ATF knew they were machine guns and under the statute they're [409] machine guns, but if you look at *Staples* and *Thompson,* that's not what they've got to prove. So they've got to prove not that – he doesn't get off if he says – if they prove he knew it was a machine gun but didn't know it was against the law. They have to prove that that bundle of parts, those things that he had, he knew they were destructive devices or he knew they were machine guns in the configurations in which they were.

The other thing that I would say, Your Honor, that much has been made of in this case, and it came out a little bit through the government's undercover agent, the emails that were admitted, that he had sold a lot of these things. You know, the government started off their case by saying that Mr. Adamiak was greedy and dishonorable. I think the evidence in this case has shown anything but that. The fact that he's openly selling these things on gunbroker, that he's registering the M203 and the M79 and getting them through a firearms – Bob's Gun Shop or Gunshop of America or whatever it is, certainly, I think, speaks to his intent

that he had no knowledge that those things were machine guns.

Now, they spent a lot of time talking about a lot of stuff he's not charged with. I understand that's perhaps admissible on the issue of knowledge and intent. But I would say to the Court that evidence actually helps prove our point that he didn't know what these devices were in the state they were in.

[410] Finally, Your Honor, I'm not here to, I don't – I know there are a lot of Second Amendment challenges in cases going on, and you can't be asked to predict the future and know what is going to be said in the future, but the idea that – I mean, I'll give an example.

The last man that was up there, the last agent for the government, everything he saw was a machine gun. He called the flat, he called the flats machine guns. He called the bolts a machine gun. Everything. It's like he called a gun that's sold as a toy a machine gun. Now, that's his testimony and that is his opinion, and I think he probably really believes that. But the ATF, that's the first agent they put up there. The whole destructive device, those are ATF guidelines, they're not the law. You know, the first guy says you can saw it in half once isn't good enough, it's got to be three times. Next guy says in one breath you've got to melt, crush or something else – melt, crush, smelt, something – then he comes up and says, well, no, you don't really have to do that, you can weld a bolt in and you can drill a hole in it. So that's what underlies this.

But this case is not about what's required by ATF to consider something destroyed. The issue in this case is what did they prove to show this jury that my client knew these devices were destructive devices or machine guns in the state in which he had them. And

for those reasons, Your Honor, we would ask you to dismiss the charges.

[411] THE COURT: All right. Thank you, Mr. Woodward. Did you wipe that down?

MR. WOODWARD: I did not. I'm sorry. Mr. Muhr's almost retiring. I know he doesn't want to die of some germ I left up here this close to pay-dirt.

MR. MUHR: Your Honor, in regards to Count 1, 3, 4 and 5, each of those are all charges of receiving, possessing an unregistered firearm, okay? So the elements on those charges, the first element is that defendant knowingly received or possessed a machine gun. That would be as to Count 2 – as to Count 1. And then a destructive device as to Counts 3, 4 and 5. Those would be the two grenade launchers and the missile launchers that. The big long ones, Your Honor. That clearly, Your Honor, has been shown. He mailed that machine gun to ATF through their CS, Your Honor. And he possessed those other things right in his house.

The second element, Your Honor, is that the defendant had knowledge that what he was possessing was a firearm. Okay. Now, in regards to the machine gun, if you remember, there was an email that Mr. Pruess read in that the defendant himself called it a complete PPSh machine gun, Your Honor. He knew exactly what it was on this thing.

In regards, Your Honor, to the other items in there, you remember he had a conversation when it came to the grenade launchers, again with Mr. Pruess, where he warned him, you can't [412] have the receiver of that grenade launcher and the barrel together. And the defendant says, well, I'll just keep them separate somewhere. And he says, well, that's constructive possession, you can't do that. And then he just

basically blew him off. He clearly knows what a grenade launcher is.

And in addition to that, Your Honor, his military training on this, he even mentioned, the Master Chief, about a grenade launcher. He clearly knows what a grenade launcher is from extensive training that he has had in the military.

And it's the same thing, Your Honor, with the missile launchers. His extensive training in the military is something clearly that the jury can confer and come to a conclusion that he knew exactly what that thing was.

Your Honor, he bought these things, he had these things, he deals in firearms. These are very dangerous weapons. You can't have willful blindness and just have something and just say I don't know what it is. Particularly somebody with extensive training as the defendant had in the military on this.

And then of course the last element of those four counts is he did not register it. And that was clearly, clearly made shown, Your Honor.

Now, as to Count 2, that is the unlawful possession and transfer of a machine gun. We actually only have to prove one of the two, but we've proven them both. And in that, Your Honor, there's three elements: The defendant possessed or [413] transferred a firearm as described in the indictment, that is the PPSh machine gun. Well, he clearly possessed it. There was the emails going back and forth and that he mailed it to the confidential source, which was Greg Pruess working through ATF. So there's no question he possessed it. He transferred it on, Your Honor.

That the firearm the defendant possessed or transferred was a machine gun. We've proved it. It was a machine gun, Your Honor. That has been proven.

And that the defendant acted knowingly. He clearly knew what it was. He even named what it was in his emails with Greg Pruess that he knew this was a machine gun.

And again, his extensive training in the military, clearly he knows what a machine gun is when he sees one.

And so the evidence in this case Your Honor, is sufficient to go to the jury. It is clearly enough evidence in here, the jury can make an intelligent and clear decision on each one of these elements of all these crimes, Your Honor.

THE COURT: All right. Thank you, Mr. Muhr.

And as pertains to Counts 1, 3, 4 and 5, the elements for Count 1, No. 1, would be the defendant received and/or possessed a machine gun, which is Count 1. And then a destructive device listed in Counts 3, 4 and 5.

Second element would be that he knew he was possessing those items.

[414] And 3, the firearms were not registered. And the Court's relying on the *Barbito* case, B-a-r-b-i-t-o, No. 2:09cr222-01, 2010 Westlaw decision 534318 in the Southern District of West Virginia, December 20th, 2010.

And then the *U.S. v. Wright* decision at 991 F.2d, 182 on Page 1188, a Fourth Circuit 1919 decision.

Then as it pertains to Count 2, elements would be that, No. 1, he possessed and/or transferred the

firearm; two, that it was a machine gun, and three, that he acted knowingly.

The case the Court's looking at pertains to that would be *U.S. v. Depedrick,* No. 3:05cr240, a 2009 Westlaw decision 972894 at 11, Western District of North Carolina, April 9th, 2009.

And as the parties know, the evidence at this stage would be in the light most favorable to the government. I've got to consider circumstantial and direct evidence. All benefits are given to the government, and reasonable inferences and credibility would be a call for the jury.

In this instance, I do agree with the arguments of Mr. Muhr, and generally speaking, I'm looking at, No. 1, the defendant's relationship with Mr. Pruess during fall the 2021. They were gun folk together.

And then we have the three controlled buys, November, December of 2021.

Then of course the March 15th controlled buy regarding [415] the PPSh machine gun. And the search warrants.

And then we have the testimony of Officer Davis as well as Mr. Bodell and whether or not these things are machine guns and/or destructive devices.

And regarding – and Mr. Woodward or Good, I can't remember, during opening in this case, it was about knowledge, the defendant's knowledge or criminal intent.

As pertains to that, the Court generally is noting as alluded to by Mr. Muhr that, No. 1, the defendant was put on notice by the CI and warned about the necessity of having these things registered.

There was some conversation that the defendant indicated he would keep one item in one house and another item in another house, he would get the licensing later.

We have all the pre-March behavior in selling.

Of course the controlled buys.

There's a document regarding the burner that's in the record.

There was documents regarding him not being a FFL or a SOT.

And that none of the items indicted are being registered or pending registration.

We know that this is a profitable business. The dark web's involved.

And we've got the testimony of the agent that went [416] through all the – Mr. Bodell, things that were seized.

And the bottom line via the military he's very, very; smart, he's a leader, he's astute in the firearm world, and he's knowledgeable of rules and regulations.

So for all those reasons generally I believe it's a jury issue on the elements of the offense, so I'm going to deny the motion to throw the charges out.

My next question would be, Mr. Woodward or Mr. Good, is the defense evidence – there was testimony about a expert following the testimony of Mr. Adamiak, and so where are we at that posture?

MR. GOOD: Your Honor, the defense has decided that we are not calling a defense expert.

THE COURT: Okay.

MR. GOOD: And Mr. Adamiak has decided he is not going to testify.

THE COURT: Okay. So hold on one second.

All right. Mr. Adamiak, if you can come to the podium, please, so we can put you under oath?

(Defendant placed under oath.)

THE COURT: All right. And sir, you've been present throughout the trial so you know the procedures of the trial. Your attorney has indicated to me that you do not want to testify; is that correct?

THE DEFENDANT: That's correct, Your Honor.

[417] THE COURT: All right. And you understand that I'll give the jury an instruction at the appropriate time that they're not to hold that fact against you. Do you understand that?

THE DEFENDANT: Yes, Your Honor, I do.

THE COURT: All right. But you also understand by not testifying you've told the Court that you do not want your attorneys to put you on the stand; is that true?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you don't want to go through the direct examination of either Mr. Woodward or Mr. Good; is that true?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Then you would not want to be subject to cross-examination by the Assistant U.S. Attorney?

THE DEFENDANT: No, Your Honor, I wouldn't.

THE COURT: Do you have any questions for your attorneys on this issue outside of the presence of all those in the courtroom?

THE DEFENDANT: No, Your Honor.

THE COURT: And it's your desire to remain silent?

THE DEFENDANT: Yes, Your Honor.

THE COURT: That's great.

You guys can have a seat.

All right. So what I suggest that we do is excuse the [418] jury for the day and then have our charging conference, and maybe in 15 minutes after a 15-minute break. Is that good for you, Mr. Muhr?

MR. MUHR: Yep, that's good.

THE COURT: All right. And Mr. Good?

MR. GOOD: Yes, Your Honor.

THE COURT: And you, Mr. Woodward?

MR. WOODWARD: Yes, ma'am.

THE COURT: All right. So let's bring the jury back in so I can excuse them, and then we'll take a 15-minute break and come back for our charging conference.

(Jury entered the courtroom.)

THE COURT: All right. Ladies and gentlemen, the administrative things that we have will probably take until 5:00 to get through today, so we're going to release you for the rest of the day. And you know the rules: Don't talk about anything to anybody.

We're going to start back up at 9 o'clock sharp.

So have a good rest of your day, and we'll see you in the morning.

(Recess taken from 3:04 p.m. to 3:17 p.m.)

THE COURT: All right. So I haven't had trials with you guys, I don't think, other than you, Mr. Muhr, which I forgot, so I'm going to just read the number and the subtitle for the record. I know there's not many objections to the jury [419] instructions, but I'm making the record. And then when we got to the four, I believe, Mr. Good wants to replace the government's, we can talk about that. So if you have any objection to any number, just state so on the record. And I'll do the government first and then defendant.

First is Jury Instruction No. 1. Introduction to the Final Charge.

Jury Instruction No. 2, Judging the Evidence.

No. 3, Evidence Received In The Case.

No. 4, Direct and Circumstantial Evidence.

No. 5, Inferences from the Evidence.

No. 60, Jury Recollection Controls.

No. 7, The Question Is Not Evidence.

No. 8, Presumption of Innocence, Burden of Proof and Reasonable Doubt.

No. 9, Consider Each Count Separately.

10, Objections and Rulings.

11, Court's Questions to Witnesses.

12, The Indictment is Not Evidence.

13, Opinion Evidence, The Expert Witness.

14, Specific Investigation Techniques Not Required. Do you all still want that? Do you still want that, Mr. Muhr? There is no questioning along those lines.

MR. MUHR: I don't think anything was brought up along these lines.

[420] THE COURT: So we can remove it, Mr. Good?

MR. GOOD: Yes, Your Honor.

THE COURT: So we're going to get rid of Jury Instruction No. 14.

15, Number of Witnesses Called Is Not Controlling. You still want that, Mr. Muhr? The defense didn't call any witnesses.

MR. MUHR: No.

THE COURT: So we can get rid it? We can get rid of it?

MR. MUHR: I think we can.

THE COURT: Okay. Thank you. We'll get rid of 15 as well.

16, Credibility of the Witnesses.

17, Credibility of the Witnesses-Inconsistent Statements. We didn't really have any of that evidence. Can we get rid of it?

MR. MUHR: Yes.

THE COURT: All right. Mr. Good's shaking his head yes.

MR. GOOD: Yes, Your Honor.

THE COURT: 18, Credibility of the Witnesses-Defendant as a Witness. We can get rid of that. He's not testifying.

19, we're keeping that, Effect of Defendant's Decision Not to Testify.

[421] 20, On or About Explained.

21, Knowingly defined.

22, Willfully defined.

23, Proof of Knowledge or Intent.

24, Proof May Be Disjunctive.

25, Deliberate Ignorance Explained.

26, The Nature of the Offense Charged, Counts 1, 3, 4 and 5.

27, the statute defining Counts 1, 3, 4 and 5.

28, the elements of the offense charged in Counts 1, 3, 4 and 5.

29, Firearm defined.

30, Machine Gun defined.

31, Destructive Device defined.

And then right behind that one we have Mr. Good's Jury Instruction No. 31. All right. And what he's done is he's added from his instruction the second paragraph to the government's destructive device, one paragraph. And so I guess I'll hear from you first, Mr. Muhr.

MR. MUHR: Can I say it here, Your Honor?

THE COURT: You can stay there. Feel free to take off your mask so we can type down what you're saying, and have a seat.

MR. MUHR: Your Honor, I think the best way to handle this destructive device is we use like a first portion, they use [422] a second portion, middle portion. I think the best thing to do is, Your Honor, is

because it's not all that long in the Code, is just list the whole destructive device defense.

THE COURT: In one instruction?

MR. MUHR: One instruction –

THE COURT: That's what I'd say.

MR. MUHR: – then it's covered.

THE COURT: Is Mr. Good good with that?

MR. GOOD: I agree.

THE COURT: So we're going to combine both of these instructions and just make it one. So it will be one instruction in two paragraphs.

Okay. Next, 32, Receipt, Possession of a Firearm.

33, Knowing Receipt or Possession.

34, Firearm Was Not Registered to the Defendant.

35, the offense charged, Count 2.

36, the statute defining the offense charged, Count 2.

37, the elements of Count 2.

38, the first element, possession or transfer of a firearm.

All right. 39, second element, machine gun. Then Mr. Good has submitted an instruction as well. And it looked like it was the same instruction to me. Mr. Muhr's had four paragraphs and Mr. Good's had two.

MR. MUHR: I agree. I think it's the same, it's just [423] formatted differently.

MR. GOOD: Your Honor, we just, we wanted to make sure that the *Staples* instruction was included for that count for the 922(o).

THE COURT: Well, right now I'm not talking about *Staples,* I'm just looking at Jury Instruction 39. You should have two; Mr. Muhr's and yours. And to me, they look identical. So I just need you to confirm that. And then I think there's a subsequent instruction that deals with *Staples* that we'll get to.

So Mr. Muhr's has four paragraphs and yours has two, but we compared each line on both instructions and they're identical.

MR. GOOD: Does appear that they are, Your Honor.

THE COURT: Okay.

MR. GOOD: At the late hours of the night I must have thought that there was something different.

THE COURT: Okay. We're fine. So we're going to get rid of the second.

COURTROOM DEPUTY CLERK: There's a one-word difference, Tracey said.

THE COURT: In No. 39? What is it? I didn't see it.

(Court and law clerk conferred.)

MR. GOOD: I did, that is accurate, your Honor. I switched "device" in place of "firearm" in my recommended [424] instruction.

THE COURT: Okay. Gotcha. I missed that. Okay. So what's your position on that, Mr. Muhr? So it would be Mr. Good's first paragraph, second line. He used "device", and in your first paragraph you use "firearm".

MR. MUHR: I think "firearm" is the proper term, Your Honor. It's not a device.

THE COURT: Me too.

MR. GOOD: Your Honor, the only reason, what my logic was when I was working on these, was that that is – because there was other language – there were a number of definitions of firearm. It sort of reads that the defendant possessed a firearm, and if you, you know – and that you've got to determine whether that firearm was a machine gun. The rationale of switching "firearm" for "device" was basically so that the jury doesn't assume that we're starting out with it being a firearm.

THE COURT: Well, all right. What I'm going to do, I'm going to deny your request and we'll affix this to the record so you can raise it on appeal. I think the elements are clear. The case law, I read it in denying the Rule 29, and I think the proper word is "firearm". So we will make that second jury instruction 39 of Mr. Goods' a denial, and make sure it's on the record and on the docket.

All right. Next will be Jury Instruction 40, third [425] element, Defendant Acted Knowingly.

And then here Mr. Good also submitted an instruction, a third element, "Defendant Acted Knowingly". And as far as I can tell, the instructions are the same except that in Mr. Good's instruction, the third paragraph of the second line he's included all of the characteristics. So he's saying in addition, the government must prove the defendant knew the device he possessed or transferred had all of the characteristics that make it subject to regulation as a firearm. And *Staples* says that the government is required to prove beyond a reasonable doubt the defendant knew that the weapon he possessed had characteristics; *Staples* doesn't say all the characteristics. So I need to know what the government's position is on that.

MR. MUHR: I'm sorry, Your Honor.

Your Honor, if you're going to go with it I think it has to be the way it's written in that –

THE COURT: *Staples?*

MR. MUHR: Yes.

THE COURT: And I think that the government's instruction covers that.

MR. MUHR: Yes.

THE COURT: Or I can add your second paragraph, Mr. Good, and get rid of the language "all of the characteristics." All of the – so it'll read "Transferred, had [426] characteristics. *Staples* doesn't say it has to be all of the characteristics, *Staples* says "had characteristics".

MR. GOOD: Yes, ma'am. I believe, Your Honor, I pulled that language from a jury instruction where this language was in the Pattern instruction. It wasn't for the 922(o) Pattern instruction, but that's why I have the language "all of".

THE COURT: Okay. Well, I'll note your objection, and what we're going to do is we're going to – for Jury Instruction No. 40, we'll use yours but we're going to get rid of "all of the".

MR. GOOD: Yes, ma'am.

THE COURT: Because I don't believe that that's what the law is via the Supreme Court. "All of the."

MR. MUHR: Your Honor, also too in that second paragraph, it's referring –

THE COURT: I can't hear you. Put your –

MR. MUHR: I'm sorry.

THE COURT: So are you looking at your version or Mr. Good's?

MR. MUHR: No. His version, Your Honor. In the second paragraph, second – the fourth word over, again, the word "device" is used. And we're not talking about a device here, we're talking about machine gun or firearm, but not a device.

[427] THE COURT: So this is No. 40?

MR. MUHR: Yes.

THE COURT: And this is Mr. Good's you're looking at?

MR. MUHR: Yes.

THE COURT: And what paragraph?

MR. MUHR: The second – I'm sorry. The third.

THE COURT: Okay. But there's no devices in the second.

MR. MUHR: I'm sorry, Your Honor.

THE COURT: Okay. So that's right. Yeah, I would change that to "firearm" as well, and that's consistent with my prior ruling and your objection will be noted, Mr. Good.

MR. GOOD: Your Honor, may I be –

MR. MUHR: In this case it should be machine gun because then it has, you know, the characteristics of a firearm.

THE COURT: Firearm or – all right. Machine gun.

MR. MUHR: Yes.

MR. GOOD: Well, Your Honor, the government's proposed instruction has "weapon". So the jury has to determine if it has the characteristics. Again, it

essentially creates a presumption that we're starting with it's a firearm, but again, the government has the term "weapon". And I of course would respectfully submit that we would prefer that over "firearm" in Instruction 40.

THE COURT: I think it's firearm, i.e., machine gun, [428] isn't it? Does a firearm come first and then it's machine gun?

MR. MUHR: I'm not certain what you're asking me, Your Honor.

THE COURT: Shouldn't it be firearm, and in this instance for Count 1 and 2, it's a machine gun?

MR. MUHR: For Counts 1 and 2 it's a machine gun. Yes, it is. And of course the machine gun is a firearm too. You know what I mean?

THE COURT: All right. So what are we doing with this instruction, I guess is my question.

MR. MUHR: If, if you want to change it to "weapon", I mean, that, you know...

THE COURT: So "weapon" instead of "device"?

MR. MUHR: Yeah. I don't think "device" is the right word.

THE COURT: All right.

MR. GOOD: That's fine, Your Honor. That was –

THE COURT: Is "weapon" good, Mr. Good?

MR. GOOD: "Weapon" will work, Your Honor.

THE COURT: Okay. So "weapon" will work, and we're getting rid of "all of the", correct?

MR. GOOD: Yes, ma'am.

THE COURT: And everybody's in agreement?

MR. MUHR: Yes.

THE COURT: Mr. Good?

[429] MR. GOOD: Yes, ma'am.

THE COURT: All right. 41. Caution: Punishment.

The next one would be – my numberings' off, but it would be Jury Instruction, and then it's elements of all five Counts. And this was your last instruction, Mr. Good, that you wanted to apply to all five counts of the indictment.

Mr. Muhr, do you see where I am?

MR. MUHR: I do see it, Your Honor.

THE COURT: Okay. And what is your position on what would be, in your package, Jury Instruction 43?

MR. MUHR: Well, Your Honor, what we're trying to do is add an additional element that isn't – that we don't have to prove. I think we have proven it, but it's not something we've got to prove in order to sustain the count.

THE COURT: Right. And what's your position on this, Mr. Good?

MR. GOOD: Well, Your Honor, that is how the statute reads. When 5845 defines firearm and destructive device, for each one it starts off with "it is a weapon." And I would just respectfully submit that that makes it an element that it has to be a weapon first before it can meet the definition of machine gun or destructive device.

THE COURT: Okay. And what I'm going to do, I'm going to overrule your objection to this proposed, your Defense Jury Instruction – says 43, I don't know if the number's right or [430] not, but element of all five

Counts, "weapon" which you want added to all the elements, and I'm relying on the case law that I read into the record as it pertains to the elements for counts 1, 2, 3, 4 and 5, and then elements for Count 2.

And so I'm not going to give that instruction, Mr. Good, but it'll be on the record if you want to appeal it if he's convicted.

And then the last jury instruction will be the Verdict, Election of the Foreperson.

And then the only other thing I need to know is have you both reviewed the verdict form and does anybody have any objections to it?

MR. MUHR: No. No, Your Honor.

THE COURT: All right. And Mr. Good?

MR. GOOD: I have reviewed it, and no objection, Your Honor.

THE COURT: Okay. All right. And so we're going to start tomorrow at 9:00 with the jury instructions and closing arguments. I don't think I asked you this yet: Mr. Muhr, are you doing the closing?

MR. MUHR: I am, Your Honor.

THE COURT: And approximately how long? MR. MUHR: 45 minutes.

THE COURT: So we'll give you an hour. And how about rebuttal, approximately?

[431] MR. MUHR: I guess it depends on... half hour?

THE COURT: Half hour? Okay.

Mr. Good, you're doing closing?

MR. GOOD: Mr. Woodward.

THE COURT: Mr. Woodward? How long do you need, sir?

MR. WOODWARD: Hour to hour and 15 minutes.

THE COURT: So we will give you an hour and a half.

So that's 9:00, 10:00...

MR. GOOD: And Your Honor, I do have something else when the Court's ready.

THE COURT: Okay. So I think we're good.

All right Mr. Good, I'll be glad to hear from you.

MR. GOOD: Thank you, Your Honor. So we have a an additional proposed instruction, Your Honor, which is based on the Supreme Court's *Thompson Center Arms* case. It's a very short instruction. We've provided –

THE COURT: Have you provided a copy to Mr. Muhr?

MR. GOOD: I have, Your Honor.

THE COURT: Okay. Can I see it, please?

What's the gist of it, Mr. Good.

MR. GOOD: Your Honor, it is, it is that if there's another law – there is a lawful purpose, if a person has a combination of parts rather than an assembled weapon, which is what we have here, that the government must prove that the parts would have no other utility except as to, except to assemble a [432] regulated weapon. The evidence in this case is that Mr. Adamiak had a replica M203 receiver and a replica M79 receiver as well as other barrels to include 37mm barrels, and that would constitute a lawful purpose for those devices.

THE COURT: Mr. Muhr?

MR. MUHR: Your Honor, we just received this just before Your Honor went on the bench.

THE COURT: Okay. Fair enough. Because I don't like surprises either.

And so it's 3:35. So how much time do you have to look into it and then email to Madam Lorraine what your position is on it so we can figure out what we're doing, because I don't do surprises.

MR. MUHR: Can you give us at least a half hour?

THE COURT: We will give you till 4:30, all right, to let me know what your position is on it.

And is it the same instruction, Mr. Good?

MR. GOOD: I'm sorry, Your Honor?

THE COURT: I've got five pages.

MR. GOOD: Oh, they are.

THE COURT: Okay. I was like... I was like, Mr. Good, we don't do that. So I just need one page.

All right. So you email us. Let's do this: You email within, by 4:30, and then we'll give you all until 5:00 to reply back, and then I'll make a decision. And if I don't [433] include it, we'll note it as an appeal.

MR. GOOD: And Your Honor, I'm sorry, I'm very sorry. One last thing if I could? I want to make sure on 40, one thing, and I –

THE COURT: Hold on one second. Let me get to it. Okay, I got it.

MR. GOOD: I wasn't sure, the Court said "i.e., machine gun." I do want to make sure there was more than just firearm in that *Staples* part of the instruction that the jury is aware that – whether the government

has proved that Mr. Adamiak was aware that the characteristics make it subject to regulation as a firearm that is a machine gun.

THE COURT: Say that again, please?

MR. GOOD: Basically, Your Honor, in the second paragraph of our proposed, the defense proposed Instruction 40 –

THE COURT: The second paragraph, not the third paragraph?

MR. GOOD: Actually, Your Honor, I'm sorry, it is the third paragraph. The first two blended in to me for some reason. It's the third paragraph, the *Staples* part of the instruction that it does have machine gun as opposed to just firearm as far as what the government must prove that he was aware of.

THE COURT: So right now it reads "In addition, the [434] government must prove that the defendant knew that the weapon he possessed or transferred had characteristics that make it subject to regulation as a firearm." Right.

MR. GOOD: I think that should have – it does, Your Honor. I think it should have "machine gun" in addition or in place of "firearm".

THE COURT: But that's covered in Instruction 39, the second element of machine gun.

MR. GOOD: It is, Your Honor.

THE COURT: We're fine. I mean, you gotta take it as an animal: Take all the instructions as it pertains to whatever count. So it's in there, so I think we're good.

MR. GOOD: Yes, ma'am.

THE COURT: Anything else, Mr. Good?

MR. GOOD: No, Your Honor.

THE COURT: Mr. Muhr?

MR. MUHR: No, Your Honor.

THE COURT: All right.

MR. WOODWARD: Judge?

THE COURT: So we'll here from you all – Mr. Woodward?

MR. WOODWARD: Last case I had with you was a while ago. Do you read the instructions first?

THE COURT: I do. Thanks for asking. I read the instructions first –

[435] MR. WOODWARD: Before closing.

THE COURT: – and then we give instructions to the jurors while I'm reading so everybody can read along.

MR. WOODWARD: Gotcha.

THE COURT: Because the more of the law they know, the better.

Anything else, anybody?

MR. WOODWARD: No, Your Honor.

THE COURT: All right. We'll see you tomorrow morning at 9 o'clock.

(Whereupon, proceedings concluded at 3:40 p.m.)

APPENDIX L

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Case Number: 2:22CR00047-001

USM Number: 95252-509

UNITED STATES OF AMERICA

v.

PATRICK TATE ADAMIAK,

Defendant.

JUDGMENT IN A CRIMINAL CASE

Defendant's Attorneys: David Good and Lawrence Woodward

The defendant was found guilty on Counts 1, 2, 3, 4 and 5 after a plea of not guilty.

The defendant is adjudged guilty of these offenses:

Title and Section	**Nature of Offense**	**Offense Ended**	**Count**
T. 26 U.S.C. §5841, 5845, 5861(d) and 5871	Receive and Possess an Unregistered Firearm	March 28, 2022	1
T. 18 U.S.C. §922(o)	Unlawful Possession and Transfer of a Machinegun	March 28, 2022	2
T. 26 U.S.C. §5841,5845, 5861(d) and 5871	Receive and Possess an Unregistered Destructive Device	April 7, 2022	3
T. 26 U.S.C. §5841,5845, 5861(d) and 5871	Receive and Possess an Unregistered Destructive Device	April 7, 2022	4
T. 26 U.S.C. §5841,5845, 5861(d) and 5871	Receive and Possess an Unregistered Destructive Device	April 7, 2022	5

The defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until the special assessment imposed by this judgment

is fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

June 13, 2023
Date of Imposition of Judgment

/s/ Arenda L. Wright
Signature of Judge

Arenda L. Wright Allen, United States District Judge
Name and Title of Judge

June 27, 2023
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of TWO HUNDRED FORTY (240) MONTHS. The term consists of ONE HUNDRED TWENTY (120) MONTHS on count one and ONE HUNDRED TWENTY (120) MONTHS on count two, to be served consecutively. The term also consists of ONE HUNDRED TWENTY (120) MONTHS on count three, ONE HUNDRED TWENTY (120) MONTHS on count four, and ONE HUNDRED TWENTY (120) MONTHS on count five, all to be served concurrently to all other counts.

The Court makes the following recommendations to the Bureau of Prisons:

1. The defendant shall be incarcerated in a facility as close to the Tidewater Virginia area as possible.

2. The defendant shall be incarcerated in a facility that will provide vocational and educational opportunities.

The defendant is remanded to the custody of the United States Marshal.

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

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of THREE (3) YEARS. This term consists of THREE (3) YEARS on count one, THREE (3) YEARS on count two, THREE (3) YEARS on count three, THREE (3) YEARS on count four and THREE (3) YEARS on count five, all to run concurrently.

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 you pose 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 (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where 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.

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

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 500.00	$ 0.00	$ 0.00	$ 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 for the fine restitution.

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** 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.

Payments of Restitution are to made payable to the Clerk, United States District Court, Eastern District of Virginia.

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 $ ____ due immediately, balance due

☐ not later than ____, or

☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B☐ The special assessment shall be due in full 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:

Any special assessment payments may be subject to penalties for default and delinquency.

Nothing in the Court's order shall prohibit the collection of any judgment by the United States.

Since this judgment imposes a period of imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

☐ Joint and Several

Case Number

Defendant and Co-Defendant Names (*including defendant number*)

Joint and Several

Corresponding Payee, if appropriate

Total Amount

Amount

☐ 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:

SEE PRELIMINARY ORDER OF FORFEITURE FILED ON MARCH 29, 2023

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Criminal No. 2:22CR00047-001

UNITED STATES OF AMERICA

v.

PATRICK TATE ADAMIAK,

Defendant.

NOTICE OF APPEAL

Notice is hereby given that the defendant in the above-named case, Patrick Tate Adamiak, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the final judgment entered in this case on the 27th day of June 2023.

Undersigned counsel have not been retained represent the defendant on appeal, as the defendant advised undersigned counsel that he wishes to have other retained counsel on appeal. If the Court appoints counsel to represent the defendant on appeal, undersigned counsel respectfully request that the Court appoint CJA counsel and that undersigned counsel not be appointed.

Respectfully submitted,

PATRICK TATE ADAMIAK
Of Counsel

/s/
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/s/
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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of June 2023, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record, including the following:

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Special Assistant United States Attorney
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APPENDIX M

[28] (Government's Exhibit No. 17 received in evidence.)

BY MR. MUHR:

Q. Please tell the jury what they're looking at.

A. That is a picture of a RPD machine gun receiver with a single saw cut.

Q. And where is the saw cut?

A. The saw cut is in the middle. Originally this was one receiver, and you can see the single saw cut has separated it into two different portions.

Q. Okay. If you would look on your screen over there, does that show where the saw cut was?

A. Yes, it does.

Q. Okay. All right. Now I want to draw your attention – first of all let me ask you, was there a fourth buy?

A. Yes, there was.

Q. Okay. And what is it that you were attempting to buy on the fourth buy?

A. On the fourth buy we attempted to purchase a PPSh-41 complete machine gun.

Q. All right. And what was the negotiated price?

A. The negotiated price was $3,000.

Q. And was this around March of 2022?

A. Yes, it was.

Q. And the procedure to set up this buy, same as all the [29] others; is that correct?

A. Yes, it was the same procedure.

Q. Let me have you look at Exhibit 18, please.

Can you briefly describe that?

A. Yes. That is a picture of some of the money orders sent to the defendant.

MR. MUHR: Your Honor, I'd admit into evidence Exhibit 18 and ask it be published to the jury.

THE COURT: Will be admitted and published.

(Government's Exhibit No. 18 received in evidence.)

BY MR. MUHR:

Q. Okay. Please tell the jury what they're looking at.

A. That is a picture of some of the money orders sent to defendant to purchase a complete PPSh-41 machine gun.

Q. Okay. And let's look at Exhibit 19, please. Briefly describe that.

A. That is a picture of the envelope used to send the money orders to the defendant.

MR. MUHR: Your Honor, I'd move into evidence

Exhibit 19 and ask it be published to the jury.

THE COURT: Be admitted and published.

(Government's Exhibit No. 19 received in evidence.)

BY MR. MUHR:

[30] Q. All right. Can you tell the jury what they're looking at?

A. Yes. That's a picture of the envelope used to send the money orders of $3,000 in money orders to

defendant to purchase a complete PPSh-41 machine gun. The top you see our CI's false name along with the address. Below that you see the defendant's name and also the defendant's address, 4421 St. Mark Road, Virginia Beach, Virginia.

Q. Okay. Now let's look at Exhibit 20. Briefly identify that, please.

A. Yes. This is a picture of the box that we received from the defendant.

MR. MUHR: Your Honor, I'd move into evidence Exhibit 20 and ask it be published to the jury.

THE COURT: Admit and publish.

(Government's Exhibit No. 20 received in evidence.)

BY MR. MUHR:

Q. Okay. Tell the jury what they're looking at, please.

A. That is a picture of the box containing the complete PPSh-41 machine gun received from the defendant.

Q. Okay. And again, what are the addresses there?

A. Yes. The www.blackdogarsenal.com is the website of the defendant's company. Black Dog Arsenal is the company owned by the defendant. 3521 Bow Creek Boulevard, Virginia Beach, Virginia is the address owned by the defendant, and then the [31] CI's false name along with the P.O. Box.

Q. Okay. The next exhibit's going to be a physical exhibit, but then we'll show a picture on the screen. It's Exhibit 21, the actual PPSh machine gun.

What is it you have in your hand there?

A. In my hand I have a disassembled but complete PPSh-41 machine gun.

MR. MUHR: Your Honor, I would admit into evidence Exhibit 21 and ask that a picture of it be published to the jury.

THE COURT: Admit and publish the picture.

(Government's Exhibit No. 21 received in evidence.)

BY MR. MUHR:

Q. Look on your screen. Is that the same – is that picture also a picture of that same machine gun?

A. Yes, it is.

MR. MUHR: Your Honor, I'm going to – never mind,

Your Honor. I'm going to go to Exhibit 22.

THE COURT: Okay.

BY MR. MUHR:

Q. Please identify that.

A. That is another picture of the complete PPSh-41 machine gun that we received from the defendant.

MR. MUHR: Your Honor, I would admit into evidence [32] Exhibit 21 and ask it be published to the jury.

THE COURT: Be admitted and published.

MR. WOODWARD: Was that 22, Your Honor?

THE COURT: 22.

MR. MUHR: 22. Did I say 21? I'm sorry.

THE COURT: You did.

MR. MUHR: Apologize. 22.

THE COURT: That's fine.

(Government's Exhibit No. 22 received in evidence.)

BY MR. MUHR:

Q. Can you please describe what the jury's looking at there?

A. Yes. That is a picture of the complete PPS-41 machine gun we received from the defendant. It is disassembled, but all the parts are there.

Q. Can you just briefly cover those parts?

A. Yes. At the top you see the lower receiver assembly. Below that you see a barrel. Below that you can see the receiver which also has a single saw cut, so it's cut into two portions. The upper right part of that receiver and the longer portion of the receiver below that are one item, they just have a single saw cut through them, through it. Then there's other firearm parts below that.

Q. If you look on your screen there, please, there's a little highlighted picture. Is that showing the saw cut?

[33] A. Yes, it is.

Q. Okay. Now let's look at Exhibit 23. Can you identify that?

A. Yes. That is a picture of the same PPSh-41 machine gun. In this picture we just put the parts where they would go and the barrel is beneath that.

MR. MUHR: Your Honor, I'd admit into evidence Exhibit 23 and ask it be published to the jury.

THE COURT: It will be admitted and published.

(Government's Exhibit No. 23 received in evidence.)

BY MR. MUHR:

Q. Can you please tell the jury what they're looking at?

A. This is a picture of the PPSh-41 machine gun that we received from the defendant. We just put the parts where they would go to show what it would look like if it was fully assembled minus the fact the barrel is beneath it.

Q. Okay. But you didn't weld it or anything, did you?

A. No, we did not weld it.

Q. It's just put together?

A. Yes. Everything is just placed where it would go.

Q. Where would that barrel fit?

A. The barrel would go – if you look at the picture at the bottom portion you can see the, I guess you would call it a hand guard, the barrel would go in there.

[34] Q. All righty. Did that then complete all the buys that you made?

A. Yes.

Q. And then how did you proceed then further with the investigation?

A. Following the fourth buy I applied for and received two search warrants for both addresses owned by the defendant, 4421 St. Mark Road, Virginia Beach, Virginia and 3521 Bow Creek Boulevard, Virginia Beach, Virginia.

Q. And were these federal search warrants or state search warrants?

A. They were federal search warrants.

Q. Okay. And did you then actually execute these search warrants?

A. Yes, we did.

Q. When I say execute, what does that mean?

A. Execute the search warrant means that we arrived at both addresses and conducted a search of the residence.

Q. Okay. Did you do this by yourself or were there other agents and police officers with you?

A. No, it was other agents with ATF, NCIS and local police officers.

Q. Okay. And what is it that you were attempting to search for at those two addresses?

A. We were searching for machine guns and destructive devices.

[35] Q. Okay. And what date was this, did this happen?

A. This was April 7th, 2022.

Q. Okay. On these two addresses, can you tell us where most of the evidence in this case was found? Which of the two?

A. Most of the evidence was found at 4421 St. Mark Road, Virginia Beach, Virginia.

Q. Okay. Now, when you have a search you have various agents there, right, and they're all searching?

A. (Nodded head.)

Q. Okay. What was your role?

A. My role, my role was evidence custodian, which means that even though I may not have found every single piece of evidence, I took it all into my custody.

Q. Okay. So whoever found it would point it out to you?

A. Yes.

Q. And then you took it and secured it and everything –

A. Correct.

Q. – is that correct?

Let's go through. Let me ask you this first of all: When you went into the place, what did it look like?

A. The house was very organized. There were several firearm parts, but everything was for the most part neatly placed into like Pelican cases. Ammunition, there were ammo cans, and it was a very organized residence.

Q. And you're speaking about the 4421 St. Mark Road address, [36] right?

A. Correct.

Q. And that is in Virginia Beach, right?

A. Yes, it is.

Q. Okay. So various items were recovered from this; is that correct?

A. Correct.

Q. All right. Let's go to – I want to show you, first of all, Exhibit 24, which is a physical exhibit down there. The 40mm grenade launcher.

A. Yes.

Q. Okay. What is it you have in your hand?

A. This is a M209 40mm grenade launcher.

Q. That's Exhibit 24?

A. Yes.

MR. MUHR: Your Honor, I'd admit into evidence Exhibit 24 and ask that a picture of it be published to the jury.

THE COURT: It will be admitted and published the picture.

(Government's Exhibit No. 24 received in evidence.)

BY MR. MUHR:

Q. Okay. Now have you seen the picture – is that the picture of the very thing you have in your hand?

[37] A. Yes, that is the same picture.

Q. Can you describe what we're looking at, please?

A. Yes. We are looking at a M79 40mm grenade launcher. To the left is the receiver, and to the right is the barrel. It operates kind of like a break-action shotgun: You would just connect the barrel to the receiver and you have a complete, full M79 40mm grenade launcher.

Q. Okay. Now, please, this is another physical exhibit down there, Exhibit 25. Another – the M203. What is it you have in your hand there?

A. I have an M203 40mm grenade launcher. This is the receiver and two barrels.

MR. MUHR: Your Honor, we ask that Exhibit 25 be admitted into evidence and a photo of it shown to the jury.

THE COURT: Admit, and please publish the photo.

(Government's Exhibit No. 25 received in evidence.)

BY MR. MUHR:

Q. Okay. Can you tell the jury what they're looking at on the screen?

A. Yes. On the left you see a shorter barrel, to the right you see the longer barrel, and between the two barrels you see the receiver.

Q. Okay. So you wouldn't put both barrels on at the same time, would you?

[38] A. No.

Q. Just one or the other?

A. Just one or the other.

Q. If I could I'm just going to back up just ever briefly.

That very last buy of that PPSh machine gun, is that the subject of Counts 1 and 2 of the indictment?

A. Yes, it is.

Q. And then the very first grenade launcher that you just picked up, the Exhibit 24, is that the subject of Count 3 of the indictment?

A. Yes, it is.

Q. And then the one that you just talked about, Exhibit 25, is that the subject of Count 4 of the indictment?

A. Yes, it is.

Q. Okay. All right. Now I want you please, this is another physical item, it's Exhibit 25-1, the M203 40mm barrel.

A. The M203 barrel?

Q. M203.

What do you have in your hand?

A. I have both barrels for the M203 and the M203 receiver.

Q. Okay. And this is – the barrels is the 25-1, both of them being 25-1; is that correct?

A. This is 25-1, this is 25-2.

Q. Okay. And then the receiver was the 25?

A. Yes.

[39] MR. MUHR: Your Honor, we would admit into evidence Exhibits 25-1, please, and then have it published to the jury.

THE COURT: 25-1 is admitted and can be published.

(Government's Exhibit No. 25-1 received in evidence.)

BY MR. MUHR:

Q. Okay. Can you tell the jury what they're looking at there on the screen?

A. Yes. That is a M203 40mm grenade launcher with two barrels.

Q. Okay. All right. If we could please, let's go to Exhibit 26 which is going to be a photo.

THE COURT: Did you admit 25-2?

MR. MUHR: I, I probably did not, Your Honor, but I do admit that.

THE COURT: Okay. Would you, please?

MR. MUHR: Thank you, Your Honor.

(Government's Exhibit No. 25-2 received in evidence.)

BY MR. MUHR:

Q. In your book up there can you look at Exhibit 26? Briefly identify that.

A. Yes. That is a picture of a M79 barrel concealed in a sock.

MR. MUHR: Your Honor, I ask to admit Exhibit 26 into [40] evidence and publish to the jury.

THE COURT: It will be admitted and can be published. (Government's Exhibit No. 26 received in evidence.)

BY MR. MUHR:

Q. Please tell the jury what they're looking at here.

A. You are looking at the barrel of M79 40mm grenade launcher concealed in a sock.

Q. Is that how it was found at the defendant's residence?

A. Yes.

Q. Okay. Let's look at that Exhibit 27, please.

Can you briefly describe that?

A. Yes. That is a picture of the M79 40mm grenade launcher barrel without the sock on it. So you can kind of see the sock to the right where we pulled it back and took another picture.

MR. MUHR: All right. Admit Exhibit 27 and ask that it be published?

THE COURT: Admitted and published.

(Government's Exhibit No. 27 received in evidence.)

BY MR. MUHR:

Q. Now if you could tell the jury what is it they're looking at, please?

A. This is a picture of a M79 40mm grenade launcher barrel. If you look to the right you can see we pulled the sock back and [41] took a picture.

Q. All right. Let's go to Exhibit 28, please.

Can you briefly describe what that is?

A. Yes. That is a barrel of – the longer barrel of a M40mm grenade launcher.

MR. MUHR: Your Honor, I'd move into evidence Exhibit 28 and ask it be published to the jury.

THE COURT: It will be admitted and can be published. (Government's Exhibit No. 28 received in evidence.)

BY MR. MUHR:

Q. All right. Can you tell the jury what they're looking at?

A. Yes. This is a picture of a M4Omm – the barrel of a M203 40mm grenade launcher.

Q. Okay. And this is at the defendant's house?

A. Yes.

Q. Okay. Let's look then at Exhibit 29, please.

Can you briefly describe that?

A. Yes. This is a picture of the shorter barrel for the M203 40mm grenade launcher.

MR. MUHR: Your Honor, I'd move into evidence Exhibit 29 and ask it be published to the jury.

THE COURT: Be admitted, and can be published. (Government's Exhibit No. 29 received in evidence.)

[42] BY MR. MUHR:

Q. All right. Can you tell the jury what they're looking at?

A. Yes. That is a picture of the shorter barrel of the M203 40mm grenade launcher which was found at the defendant's residence.

Q. Okay. And then these pictures that you see of these barrels, that's the ones you have here today physically; is that correct?

A. Correct.

Q. Okay. Now I'm going to show you another – actually going to be two. It's going to be Exhibits 30-1 and 30-2. Can you please identify what those two are?

A. I'm holding in my hand a RPG-7 missile launcher.

Q. And then 30-2, is it basically the same thing?

A. Yes, it's basically the same thing.

Q. Same thing. Okay.

MR. MUHR: Your Honor, I'd admit into evidence Exhibit 30-1 and 30-2 and ask that a picture of it be published to the jury.

THE COURT: It will be admitted, and please publish the picture.

(Government's Exhibit No. 30-1 and 30-2 received in evidence.)BY MR. MUHR:

Q. Okay. If you look at the picture there, can you tell the [43] jury what they're looking at?

A. Yes. This is a picture of two RPG-7 missile launchers found at the defendant's residence.

Q. Okay. And are those the anti-tank missile launchers?

A. Yes.

Q. And if you could just sort of briefly describe what's the front end of that, of that launcher, and what's the back end of it?

A. The front end is going to be the portion of it to your left. I mean, you can see that a portion that has the trigger and all that stuff, then the back end is the back end of the tube.

Q. Okay. Where the exhaust, everything when you fire –

A. Yes, to your right.

Q. Okay. All righty. Let's now look at Exhibit 31, please.

Can you briefly describe what that is?

A. That is a picture of the two RPG-7s as they were found in the defendant's residence.

MR. MUHR: Your Honor, I'd admit into evidence

Exhibit 31 and ask it be published to the jury.

THE COURT: All right. That will be admitted and published.

I have a question before we proceed. Is 30-tack-1 and 30-tack-2 Count 5 of the indictment?

MR. MUHR: Yes. Can you answer?

[44] THE WITNESS: Yes. Yes.

THE COURT: Okay. Thank you. All right. Go ahead Mr. Muhr, this will be admitted and published.

(Government's Exhibit No. 31 received in evidence.)

BY MR. MUHR:

Q. Can you please describe what the jury is looking at in Exhibit 31?

A. That is a picture of the two RPG-7 anti-tank missile launchers as they were found at the defendant's residence.

Q. Okay. And let's look at Exhibit 32, please.

Can you briefly describe that?

A. Yes. That is a closer-up picture of the trigger assembly of the RPG 7 anti-tank missile launchers.

MR. MUHR: Your Honor I would admit into evidence Exhibit 32 and ask it be published to the jury.

THE COURT: It will be admitted and please publish.

(Government's Exhibit No. 32 received in evidence.)

BY MR. MUHR:

Q. Can you tell the jury what they're looking at, please?

A. Yes. That's just a closeup picture of the trigger assembly of both RPG-7 missile launchers. Shows the model number and that kind of thing.

Q. Let's look at Exhibit 33. Can you briefly describe what

APPENDIX N

[94] MR. WOODWARD: I'm sorry, yes.

THE COURT: Can you repeat your question?

BY MR. WOODWARD:

Q. All of the receivers that you found that you've talked about today, the machine gun receivers had all been cut?

A. Are you talking about all the ones associated with this, like in his residence also?

Q. Yes.

A. I believe so.

Q. Okay. I don't remember seeing any pictures of any that weren't cut. Okay. You don't remember?

A. Oh, that's a question? I believe they were all cut other than obviously the destructive devices were not. But the machine gun receivers, I believe they were all cut, yes.

Q. All right. Let me ask you about what the government called Buy No. 3. That was the one where you received –

THE COURT: Mr. Woodward, can you get your mouth –

MR. WOODWARD: I'm sorry, Judge. I've got to get where I can be heard and –

BY MR. WOODWARD:

Q. That was the one where you received the number of cut receivers at one time.

A. That was No. 2 that were received, the five PPS-43 machine gun receivers.

Q. They were all in one box, correct?

[95] A. I believe so, yes, correct.

Q. That was one box that was introduced?

A. Yes.

Q. They were all – so in that box then there were 10 pieces of metal? 10 parts?

A. Well, if you look at the picture you can see where – how I took the picture, they were on this like brown paper, I believe it was brown paper. So they were packaged together, but all five were in a box, if that makes sense. The two ends were packaged together.

Q. And none of those are the subject of any charges?

A. No.

Q. Okay. So then if we could pull up Exhibit 9?

That's one of them that's cut, correct?

A. Correct.

Q. Did you – did you weld that back together?

A. It's against our policy for me to alter evidence, so once I received it, I took the pictures, at that point it's sent to our experts, the firearm enforcement officers.

Q. Exhibit 10 is the next one, correct?

A. Correct.

Q. So not to waste time, but you didn't – you didn't weld any of them back together?

A. No.

Q. And when those pictures, all the pictures that the jury saw [96] were there together, it's like you just laid them against each other like this?

A. Correct.

Q. Okay. And you didn't try to make any kind of firearm with

them or fire it or anything like that?

A. No, I did not.

Q. That wasn't your job to do that, correct?

A. Correct.

Q. Okay. The money orders and the postal money orders and all of the boxes and everything, those include all of the buys that you did with Mr. Adamiak, correct?

A. Correct.

Q. So now I want to get to the search warrant. You said there were two locations. The evidence was found mostly at one location, correct?

A. That's correct. 4421 St. Mark Road.

Q. Okay. So we don't have to go through each item, was there anything that you testified about today that's been admitted into this trial that was found at the other location?

A. No.

Q. Okay. So we got only – you searched the other location. If you took anything, it's not been admitted into court, everything's at St. Mark Drive?

A. Correct.

Q. So tell me if you could, did you do a diagram, a search

APPENDIX O

[147] A. Yes.

Q. And what is it – what role did you play in this cooperation?

A. They had me search all around to see on the Internet what weapons were being sold in the conditions that could be easily or readily restorable to a functioning firearm or a functioning machine gun, and I identified several that I saw in different places.

Q. And did you identify anything regarding the defendant?

A. Yes. He was selling those on the side.

Q. What do you mean by that?

A. He was selling them without registration and without proper paperwork.

Q. And you say "them". Could you describe what "them" is?

A. Russian PPSh-41 submachine gun, Russian PPS-43 submachine gun guns, multiple Russian RPD light machine guns, another Russian PPSh-41. There were six total PPS-43s and then two PPS-41s.

Q. How do you know if he was selling those?

A. I saw them on gunbroker.

Q. That's where he was selling them?

A. Yes. He was selling them openly on gunbroker, and was just a single saw cut through which was made them to where they could be put together in a few minutes.

Q. Okay. Now this gunbroker I think are – they're kind of [148] similar to eBay?

A. Pretty much. They're an auction. You put things on there and people bid on them and see who wins.

Q. You could put legal things on there or illegal things?

A. They don't really differentiate. It's up to you to control what you're selling. And with those being cut, even though improperly, they're – I guess they didn't give him any kind of warning or something that those were machine guns. I don't know that they know what they're looking at, the people that run gunbroker.

Q. All right. And from your experience that you've had over all the years, did you know what you were looking at?

A. Oh, absolutely. I was a machine gun manufacturer.

Q. Okay. All right. And so as a result of that and seeing him having sold these things, that's when you identified him to ATF as having possible ability to try to get illegal guns off the streets; is that correct?

A. That's correct.

Q. All right. Did you play any role in this as far as making some buys of firearms from the defendant?

A. ATF had me establish a name for him to contact, which was actually ATF, and then I just assisted with showing – with identifying what the weapons were and making the offers –

Q. Okay.

A. – to him, which he argued back and forth how much should [149] be and that he had sold lots in the past of them and I should pay this much, and we ended up –

Q. We're going to –

A. – negotiating the price.

Q. – get into all that, but let me ask you this: What name did you use?

A. Rick Hayes.

Q. Is that your name?

A. No.

Q. Okay. Why did you use the name Rick Hayes?

A. Because I had an ongoing relationship with him and I didn't want to mess that up or get too deeply involved with this, with – for danger reasons, I guess. I didn't want to be identified as being a part of it.

Q. So when you identified to him as Rick Hayes, would he have known that you were, in fact, Greg Pruess?

A. No.

Q. Okay. So he had no idea who you were?

A. No.

Q. But as you identified yourself, what were you telling him that you were interested in?

A. I was interested in any kind of saw-cut machine guns that were easily put back together, and he had quite a few variations of weapons and was agreeable to find others.

Q. Okay. I want to – if you could – let me start this way:

[150] There was a series of buys in this; is that correct?

A. Yes.

Q. Do you remember about how many individual date buys there were?

A. I believe there were four.

Q. Okay. And let's go into each one of those buys, okay?

I want to show you Government's Exhibit 4. Can you identify what that is, please?

A. That is the front and back section of a Russian PPSh-41 submachine gun.

Q. Okay. Now in order to get this machine gun, what was the procedure that you all used in order to buy this from the defendant?

A. Well, he was freely selling them on gunbroker, so basically we just became one of his customers. We made an offer based on what he had available and compromised on it, as I recall, and purchased them.

Q. So you came to some agreement on what the price would be?

A. Yes.

Q. All right. And this particular, this particular gun that you see before him – before you right now, does this thing have a saw cut in it?

A. Yes, it has a saw cut in the ejection port where the empty casings come out. A single saw cut across that.

Q. Okay. And what is a saw cut?

[151] A. It's just a hacksaw cut to render the gun unserviceable to a degree, but not unserviceable so as not to be able to be put back together. That's a different category.

Q. Okay. If I were to give you this gun and ask you can you put this thing back to together so it would shoot, what would you do?

A. I would put the two pieces together, line them up, and a couple tack welds, and that would be serviceable as far as firing it. But you could machine it down just a little bit and take another 20 minutes and it would be like it came out of the factory.

Q. Okay. If you did it just sort of just so that it would fire, how long would that take you?

A. A minute of welding.

Q. A minute of welding.

Are you familiar with welding?

A. Yes.

Q. Okay. And then if you wanted to do a little finer job?

A. It would take a Dremel tool and clean up the welds, but you could just put a piece of copper behind it so the weld didn't bleed through and just with tack welds you could put it right back on the lower receiver, which is the uncontrolled part, and it would function as a machine gun.

Q. It would function. Okay.

And when you were going to buy this as Rick Hayes, did he [152] at all ask you whether you're an FFL, do you have an SOT, anything like that?

A. No. He didn't seem to be too concerned about that.

Q. Okay. And did he ask to – say anything to you like, oh, this is registered so it's fully legal?

A. No.

Q. Okay. Nothing like that?

A. No. He just considered it parts.

Q. And did he ask you for any kind of background check or anything like that before he dealt with you?

A. No. No. Nothing like that. He just wanted the money.

Q. Okay. Have you – are you familiar with the term "black market"?

A. Yes.

Q. What is that?

A. It's basically you're selling something that is heavily controlled, but it goes for a lot of money than what it would normally go because of the circumstance or a condition, I guess. This gun in particular, it would normally be cut, all the pieces, with a torch, not a simple hacksaw, to render it to where it's nearly – a great deal of work to put back together. And it's worthless.

This, in any case, could be easily put back together, so it demanded a lot more money because it was so easy to put back together with a minimal amount of effort.

APPENDIX P

[97] diagram where you had like each room and put where each thing came from?

A. Yes. So generally when we do a search warrant, before we start we'll go through and put a sticky note on the door. So for example, at the defendant's residence, his office was Room 9. And you kind of generally you go clockwise through the front door, place sticky notes, and then on each evidence label we have a tag that's printed when we enter in evidence, but at the bottom generally – not always, but generally we'll hand-write item was found in Room 9 or Room 1.

Q. So let me start then I think with Exhibit 24 if I could. It's been admitted.

And Exhibit 24 was found at St. Mark's Road, correct?

A. Correct.

Q. And that's the M79 receiver and barrel?

A. Correct. The receiver was found in the safe in the defendant's office.

Q. Was the safe locked?

A. I believe it was, yes.

Q. How did you gain access to it?

A. We spoke to the defendant and he cooperated.

Q. Cooperated with you and opened the safe for you, right?

A. Yes.

Q. Where was the barrel found?

A. The barrel was found in a living room. So if you come into [98] the house, the office was the first room

to your right, and the living room is – sorry. The living room is the first room to your left, and the barrel was found in the living room.

Q. And that barrel is 40mm?

A. Yes, sir.

Q. Were there any barrels there that fit that receiver that weren't 40mms?

A. Because of the nature of the search warrant I would say I focused mostly on the items that were contraband. There may have been. I wouldn't remember. I mean, a 37mm barrel would not be illegal, so that's not something we would have put a lot of focus on, so I can't say for sure.

Q. So a 37mm barrel put on that receiver wouldn't be illegal?

A. No.

Q. And you're telling this jury you don't know if there were any 37mm barrels in this premises?

A. I mean, I know for sure there was a 40mm barrel.

Q. Wasn't my question, sir. I'm asking you if you know whether or not there were any 37mm barrels there.

A. I don't recall.

Q. Okay. And this barrel that you got in Exhibit 21, once you got it assembled there, that's essentially not the way you found it. You put that together to take that picture?

A. Correct.

Q. And you've already told us that that was – those two items [99] were separate?

A. Correct.

Q. Okay. And that receiver that's on the left that he bought, he bought that through a federal firearms dealer, correct?

A. Correct.

Q. Okay. You learned that during the investigation?

A. Correct.

Q. Okay. And that's the gun store that he got it from, he went through a background check and he purchased it?

A. Correct.

Q. Do you know whether or not he purchased that off of gunbroker?

A. I do not recall.

Q. Okay. Do you know whether or not, generally as an ATF agent who investigates criminal cases, if such receiver as that are available on gunbroker?

A. So to get into – if you don't mind, to get into more of the background, I guess, of this weapon, you can have a barrel without a receiver and that's okay. You can have a receiver without the barrel, and that's okay. But once you come in possession of both, that's when it becomes a destructive device, and in this case a 40mm grenade launcher.

So just because you can purchase the barrel legally and you can purchase the receiver legally, it doesn't make it legal to have both at the same time.

[100] Q.I understand that. That wasn't really my question, so let me say it again.

Do you know whether or not Mr. Adamiak purchased that receiver off of gunbroker?

A. The receiver?

Q. Yes.

A. I believe the receiver was purchased through the FFL.

Q. It got shipped to the FFL?

A. Or shipped to the FFL, excuse me. Yes.

Q. Let's make sure the jury understands. So if I wanted to buy that receiver and I said, okay, I want to buy it, I can't just have somebody on gunbroker ship it to my house, correct? I got to have them ship it to a federal firearms licensee, correct?

A. If you go through the legal method, yes.

Q. Right. Okay. Which is what Mr. Adamiak did?

A. Yes.

Q. He had it shipped, and then I gotta go over there and do a background check and make sure I pass that, then the gun dealer, or Bob's, for example, could sell it to me?

A. Correct.

Q. Okay. Now, the barrel doesn't work that way, correct?

A. I am not sure.

Q. You're not sure? So you don't know whether or not it's – whether or not you have to go through a federal firearms [101] licensee to buy a 40mm barrel? Is that what you're telling us?

A. Again, as I said before, I believe the receiver – I now for the receiver you definitely have to go through an FFL, because the receiver by itself is the same as any other firearm. The barrel, being that it's not a receiver, I'm not 100 percent sure about that.

Q. Okay.

A. Or being the barrel, that's not a receiver. I think that's what I said. I'm not 100 percent sure about that.

Q. All right. And when you did the search of Mr. Adamiak's premises that we've talked about, did you find any replica receivers?

A. Yes, we did.

Q. Okay. Did you find a replica receiver that this 40mm barrel would fit on?

A. I do not recall.

Q. Okay. Tell the ladies – so I don't get ahead of myself – what is a replica receiver, so the jury will understand it?

A. A replica receiver would generally be a non-functioning receiver that is not a receiver under a federal firearm law, so a federal law. Generally it's made to look like a real receiver, but it wouldn't function and have the necessary parts.

Q. Okay. And your testimony is you don't know whether or not there was one of those there?

A. I do not recall.

[102] Q. You searched the entire house?

A. Correct.

Q. Okay. Did you seize anything that turned out later on to be a replica?

A. Yes.

Q. Okay. We'll get to that in a minute.

Let me ask you this while we're there: If something's a replica and it's not a firearm under the law, why would you seize it?

A. Because we had firearm, firearm enforcement officers there with us because. To be honest, I mean, some of these items I've only seen in video games, so it's not something I can look at and say that I know what this is. So we had these experts here who can look at this, give a visual inspection and say I think this is what this is.

But just to be clear, once the stuff is seized, that's when it's sent to them, and they run their tests, they do their examination. We would have been there three days, four days if we would have ran an examination for each item that we found at the time that we found it. So that's kind of how that happens.

Q. Is that another way of saying that when you've got something that's a good replica that looks like the real thing, it's hard to tell the real thing from the replica? Is that what you're saying?

A. It can be.

[103] Q. Okay. Well, you said it was for you. Some of them you've only seen in video games.

A. I'm not an expert, so –

Q. Okay.

A. – that's more of a question for the experts.

Q. All right. Let's now go to Exhibit 25.

Now, the barrel on the left that's marked 25-1, what is that and where was it found?

A. If I recall correctly that was found in the office, I believe. I believe it was found in the office.

Q. Do you know where in the office?

A. I believe it was found in one of the Pelican cans.

Q. In one of the what?

A. One of the Pelican boxes. I believe it was one found in one of those.

Q. It wasn't attached to any receiver?

A. No, it was not.

Q. Okay. The same question for Item 25-2. Do you remember where that was found?

A. I believe that was also found in the office.

Q. And same thing: It wasn't attached to any receiver?

A. No, it was not.

Q. Now, just so I understand – can we put up Exhibit 26?

THE COURT: Mr. Woodward, you're going to have to remember –

[104] MR. WOODWARD: I'm sorry, Judge.

THE COURT: – we've got to hear you.

MR. WOODWARD: Apologize.

BY MR. WOODWARD:

Q. Exhibit 26, you know that was found in a drawer. It looks like there's some flowers and Christmas lights and stuff in there?

A. Yes, sir.

Q. Okay. And where was that drawer?

A. That drawer was in the living room.

Q. Okay. Now what's in that stocking or sock that says Midway, is that one of the items that's depicted in the prior exhibit, 25, or is that a different barrel?

A. Just so you guys know, the last exhibit we talked about was the M203. This is the barrel of the M79.

Q. That was found in the living room in a sock in a drawer?

A. Correct.

Q. Is that barrel illegal to possess?

A. It is illegal to possess with the receiver, which was also in the residence.

Q. That wasn't my question?

A. You cannot have both.

Q. That's not my question, sir.

That barrel, is it illegal to possess?

A. If you only have that barrel and do not possess the [105] receiver, it's not illegal to possess.

Q. That barrel wasn't attached to a receiver?

A. It was not.

Q. Okay. Where was the receiver found?

A. The receiver was found in the safe in the office.

Q. And the receiver is a firearm?

A. Yes, sir.

Q. He had the firearms locked up in a safe?

A. Yes, sir.

Q. Okay. That he gave you the combination to?

A. Correct.

Q. Likewise, did you find any replica receivers in the residence that the barrel that's depicted in 26 would fit to?

A. I do not recall.

Q. Then 27, if we could pull that up?

That's the barrel with the sock pulled back?

A. Yes, sir.

Q. Okay. Did you do any inquiry as to where Mr. Adamiak got this barrel from or who he got it from?

A. We did. I believe through the course of investigation we did find out that information, but I do not remember specifically right now.

Q. Buy it off of gunbroker as far as you know?

A. I don't remember. Maybe.

Q. The receiver that goes with that barrel, he went through [106] the same process as he did with the one for the other device:

He had it shipped to a federal firearms licensee, went through a background check and bought it that way, correct? The receiver?

A. Sorry, can you repeat that one more time?

Q. Item 26 – let's make sure it's clear.

Item 27 is a barrel for what type of device?

A. M79.

Q. M79?

A. Grenade launcher.

Q. Okay. The M79 receiver was found in the gun safe?

A. Correct.

Q. Locked up, right?

My question is, as the case agent, do you know whether or not Mr. Adamiak purchased that receiver through a gun dealer, a federal firearms licensee?

A. The receiver for the M79 was purchased through a FFL, yes.

Q. Just like the one for the 203 ones?

A. Yes.

Q. Same process: Gets shipped there, goes through a background check, correct?

A. Correct.

Q. That's a separate background check if he buys them at separate times, correct?

A. Correct.

Q. So the way it works is, you talked about if I went over to [107] Bob's right now and wanted to buy five guns, I'd go through one background check if I was purchasing them all at the same time?

A. If you were purchasing just the receiver, is that what you're saying?

Q. Well, any – yeah. If I was purchasing – if I'm purchasing multiple items at that time, I go through a background check, right?

A. Yes.

Q. And if I go this week and buy a gun, I go through a background check, and if I go next week and buy another gun I go through another background check?

A. Correct.

Q. Okay. No. 28. That is a barrel for what?

A. That's is the barrel for the M203 grenade launcher.

Q. That barrel is also depicted in Exhibit 25?

A. Yes, that's correct.

Q. And where is this? 28 that's up on the screen, where is that?

A. I believe that is in the office.

Q. Okay. And that looks like – is that a table or a drawer? I can't tell.

A. I believe it's a, either a table or one of the Pelican boxes.

Q. Certainly it wasn't attached to any receiver?

A. No, it was not.

[108] Q. Then 29, that's the other barrel?

A. Yes. For the M203 grenade launcher, yes.

Q. Was that in that plastic bag when you found it?

A. I do not recall.

Q. Okay. Where was that item found?

A. I believe that was found in one of the Pelican boxes.

Q. Wasn't attached to a receiver and wasn't in the safe?

A. No, it was not.

Q. Do you know whether or not – is your knowledge as an ATF agent, is it okay to possess that barrel? Just the barrel?

A. Again, if you only possess just the barrel, not the receiver, it is legal to possess that.

Q. Okay. Let's now go to the next exhibit which is 30 and 31.

It's 30-1, technically, I guess, is the way it's...

Now, these are pictures you staged to take the photograph, obviously, because these things have evidence tags on them?

A. Correct.

Q. And there's some pictures later on in there where you show where you found these?

A. Correct.

Q. Okay. And where was that – we'll get to that picture in a minute – if you remember?

A. Where were these found or where –

Q. Yeah. Where were they in the house? Which room?

A. These were found in the office. They were standing [109] upright.

Q. Out in open view?

A. Open view, yeah.

Q. And you also showed us – and we may get to it in a minute – some inert, inert rounds for these things that were found. Looked like it was in a storage unit or a garage?

A. You mean the rockets?

Q. Yeah. You recall those?

A. Yes.

Q. Inert means that it's – that it's non-explosive?

A. Correct.

Q. And those two items were also marked Inert, correct?

A. They were marked Inert, yes.

Q. Okay. And they also have some other markings on the barrels, don't they?

A. Yes.

Q. And what does that marking on the barrel say?

A. If my memory –

Q. You don't have to remember. They're right there. Why don't you look at them? They're admitted in evidence.

A. It says Training Aid Dummy on it.

Q. Okay. What does that mean?

A. It means that it would be used – well...

Q. If you know. Do you know?

A. Well, just that statement. I won't say what it means in [110] terms of what that means for this whole thing, but what I mean, Training Aid Dummy means that that would be a training aid. That's what you would write on a training aid, I guess is how I would put that.

Q. Well, training aid is two – what does "dummy" mean?

A. Dummy means it's not an actual item, whatever the item is.

Q. Okay. So – and do you know –

A. Replica.

Q. – who put that on there?

A. I do not.

Q. Do you have any reason to believe it wasn't on there when Mr. Adamiak acquired those two things?

A. I do not.

Q. Do you know where he acquired them?

A. I do not recall right now.

Q. Did you ever know?

A. I believe through the course of this investigation I believe we found out, but I don't recall right now exactly.

Q. Do you know how long he had them?

A. I do not recall right now.

Q. Before we move on to the next, if we could just put up No. 31, those two devices?

That's the picture that shows – you say that's his office?

A. Yes, sir.

Q. Okay. All right. Are you able – let me ask you this [111] question: I won't ask you to something that you're not able to talk for. Are you able to tell based on what you did in this case and your training and experience if any of these things had ever been fired by Mr. Adamiak?

A. Well, that's something that, that would be a better question for the experts.

Q. Okay. Are you able to tell us if there was any ammunition or bullets – I'm not much of a gun guy, if there's anybody in here that knows less about them than me, I apologize – but were there any ammunition

for those, I call them rocket-propelled grenades, other than the inert round?

A. Other than – no. Other than the inert ones, no.

Q. What about for the – what about for the saw-cut receivers you found, was there any ammunition for them anywhere in the premises?

A. There was a lot of ammunition found in the premises.

Q. That wasn't my question. My question was, was there any ammunition that would fit in a machine gun?

A. I mean, if I remember correctly there was like rifle ammunition there, so yes.

Q. But you don't know?

A. I don't recall. We didn't seize the ammo, so I don't recall.

Q. Do you know what kind of ammunition a PPSh machine gun fires?

[112] A. I believe it's 7x62, but that would be a question for the experts.

Q. Okay.

A. Because you can switch out barrels and stuff, so it gets very complicated. Or it can.

Q. All right. Exhibit 33, if we could pull that up?

Do you see that?

A. Yes.

Q. That was something that you found at Mr. Adamiak's house, correct?

A. Correct.

Q. You seized it?

A. Correct.

Q. And it turned out to be a replica?

A. That was – I think – the expert would have to speak to that one. That one was complicated, if I remember correctly.

Q. But it's not subject to any charges in this case?

A. No.

Q. Exhibit 34. You seized that?

A. Okay.

Q. That turned out to be a replica too?

A. Again, that one was complicated also, so you would have to ask the expert about that one.

Q. Not subject to any charges?

A. No.

[113] Q. Exhibit 35. You testified about that on direct, you recall?

A. Yes.

Q. This is the inside of the gun safe?

A. Yes.

Q. Other than the things that you identified, which is on the, if I'm correct – I don't know if I touch this screen if it'll show up, but right there where I just touched, that's the receiver that you testified about, correct?

A. Yes. That's the M79 receiver.

Q. That was in there underneath, and it was – that picture is just like you found it?

A. I believe so. Obviously when we opened the safe things could have shifted around, but if I remember correctly -¬actually I take that back. We – I believe we seized the currency before we took this picture. So it's not exactly the way we found it.

If you recall one of the earlier exhibits there's a picture of a lot of currency laying on some of the firearms. We removed that and then took the picture. So not exactly how we found it.

Q. So within this safe – and we'll get to the other picture in a minute – am I correct that the only two things that you seized out of that safe were the M79 and M203 receivers?

A. I believe that is correct.

Q. So all this other stuff in the safe, whatever it is, either [114] wasn't seized or certainly not the subject of any charges in the case?

A. I believe so.

Q. Okay. Let's now go to Exhibit 38. And I think – I was trying to follow along. I think you said on Exhibit 38 that's a MAC-type weapon?

A. Yes.

Q. And you're not sure whether that's where it was found or whether it was staged that way for the picture?

A. No. Not sure.

Q. Okay. But it's not a subject of any charges in this case?

A. No.

Q. All right. No. 39.

That was found where?

A. If I remember correctly, that was found in the defendant's tool box.

Q. So it was in a tool box. Were both of the parts in the tool box or was one of the parts somewhere else?

A. I believe both parts were in the tool box.

Q. And that's not subject to any charges in this case?

A. No.

Q. Did you seize that?

A. Yes.

Q. Okay. No. 40.

That, sir, appears to be laying on a sidewalk or a, maybe a

APPENDIX Q

[305] BY MR. WOODWARD:

Q. First of all, just in the structure of the report, under Exhibits you list six things that are part of the report, correct? Item 16, 23, 25, 30, 31 and 59; is that right?

A. That's correct.

Q. Okay. Now, those numbers over there, the 16, 23, et cetera, are they numbers that you put or were they the numbers that were on the exhibits when you got them from the search?

A. Those were the numbers that were on my work order which corresponded to the evidence tags.

Q. Okay. Evidence tag numbers. Okay. All right.

So let me ask you, No. 59 is not a charge in this case but it's on the report so I want to clarify: Is that a short-barreled shotgun, that item?

A. It's a short-barreled shotgun under the Gun Control Act.

Q. And you understand that's not part of the charges in this case? Or do you even know which ones are charged?

A. That's correct, I understand it's not one of the charged weapons.

Q. I now want to start a little bit out of order. Let's start with Item 30 which is the one of the RPGs. And that begins or is on Page 5 of your report in the middle, Exhibit 30.

MR. WOODWARD: Can we put Page 5 up on the screen?

BY MR. WOODWARD:

Q. Is that right? That's where you have your analysis of [306] Exhibit 30?

A. Yes, sir.

Q. Okay. And do you know when that item was manufactured? Were you able to determine that?

A. No.

Q. You just found out, you know, it was made in Bulgaria. Do you know if it was a World War II era or do you know anything about the manufacture date of it?

A. The fire control assembly indicates that the weapon was made in Bulgaria, but that's a removable part, so I wasn't able to determine if the tube was made in Bulgaria. But RPG-7s began production in approximately 1961.

Q. So after World War II – between World War II and Vietnam?

A. And it's continued production. It's still used in many places around the world today.

Q. And then I understand down there at the bottom, Exhibit 30 was missing some of the firing mechanism components, correct?

A. That's correct.

Q. A firing pin wasn't in there. What's the purpose of a firing pin in a device?

A. The firing pin transfers kinetic energy into a part to ignite the explosive compound to start the initiation process.

Q. Okay. And you had to take from your inventory of parts at the ATF a firing pin and put it in there, correct?

A. Yes. I gathered a complete fire control assembly from the [307] RPG-7 in the National Firearms Collection, attached that to the exhibit, and I installed a firing pin also.

Q. So when you got it, when it came from the search warrant it didn't have have a firing pin, right?

A. That's correct.

Q. All right. Then you have a firing pin spring. What is that?

A. Just pushes back on the firing pin so it's not stuck protruding through the tube.

Q. Did you have to get one of those out of your inventory? I mean, that's part of what you put on it before you test-fired it?

A. The firing pin spring would not be necessary. And to be completely honest, I don't remember if I used one or not. I don't think I did, because I wanted to see the firing pin protrude for a photograph, and the spring would have pushed it back so it wouldn't have protruded.

Q. So you fired it without the spring, but it didn't have a spring?

A. I believe – yes, it did not have a spring.

Q. What about the main spring? What is that?

A. The main sprain is a coil spring that, in conjunction with the next part, the main spring rod, provides kinetic energy for the hammer.

Q. So it didn't have either one of those parts either?

[308] A. Correct.

Q. You –

A. I didn't receive those.

Q. You hadn't received those, you got those when you got to West Virginia and stuck them on there before you fired it?

A. That's correct.

Q. Then a hammer. What is the hammer?

A. The hammer is the part that strikes the firing pin.

Q. And did it have one of those?

A. It did not.

Q. So you took one and put it on there?

A. I – yes. I used an entire fire control assembly and swapped them out.

Q. So when you got it, it wouldn't fire without you putting the firing control assembly on there, correct?

A. I could have fired the training device without those parts, but I chose to restore it to the way it's designed to be fired.

Q. You say you could have, but you didn't?

A. Correct.

Q. And the video that the ladies and gentlemen of the jury got shown was after you put all those parts on there?

A. Yes. That's the configuration the weapon was designed to be fired in.

Q. Further on over on Page 6 of your reports, which is the next page down, in the last paragraph from the

bottom you say – [309] or the last paragraph, I guess, where it starts "Exhibit 30 as received," that paragraph – the jury will have this, but I just want to clarify – so you say there that you can install four commercially available parts it can be restored to firing condition. I count in your list of things that it didn't have five parts: The firing pin, the firing pin spring, the main spring, the main spring rod and the hammer. So is that four parts or five parts?

A. That's – as stated earlier, the firing pin spring is not required for those components to interact with each other to fire the device.

Q. Okay. So when you say you list five but when you write four, you're excluding the firing pin spring –

A. Yes.

Q. – as one of the four?

And those parts are commercially available where?

A. Most firearms parts suppliers. When I was a gunsmith I commonly used a company called Numrich for firearms parts. I went on their website to see if they had RPG-7 parts available, they do, they are in stock. The entire fire control assembly with the grip and the components inside of it at the time was about sixty dollars in stock.

Q. So if somebody had this thing and had some desire to fire it or make it fireable, it would have been easy for them to go get those parts if they wanted to?

[310] A. Yes. Or you could have just used a punch or a rusty nail and put it through the firing pin hole and struck it. Wouldn't have been ideal, but possible.

Q. And you don't, you don't, of course, know whether any of that happened with regard to my client

or not, you just, you just know what it was like when you got it?

A. I received the evidence that I – I examined the evidence as I received it.

Q. All right.

A. And I think, without belaboring it, if you go to Exhibit 31 which kind of starts at the bottom – or starts, excuse me, on Page 7, the same thing is true – I don't need to go through them all again – that one was missing all of the same devices or parts that we just talked about?

A. Correct. They were virtually identical weapons.

Q. Right. And you had to put, do the same thing to get that one to fire for your video, put that device you had up at your lab on there?

A. I did, because I elected to test fire the device – or the weapon. The test firing of the weapon was not part of the classification.

Q. And just so it's clear, going back to 30, we'll use that one, was there a hole cut in the top of that device?

A. There's a very small hole.

Q. And what –

[311] A. Do you know what page that was on?

Q. Well, I'm trying to – I know there's a hole cut into the top of it. I don't know that it was on any page. But have you got the device there by you?

A. I do. It's on the –

Q. Have you got a picture? Is there a picture in your report of the hole?

A. Yes. It's approximately 0.39 inches in diameter.

Q. How many millimeters is that, do you know?

A. I don't know millimeters.

Q. But that's something that was drilled in there; it's not the way it would have come?

A. Correct.

Q. Just to be clear and fair to you, you don't know how this device, who had it, who bought it, how it got transferred to my client or how long he'd had it anything like that?

A. No.

Q. You just – and that would be true for all of these devices: You just know that you got them and you examined them?

A. Correct. I receive firearms and I examine and classify them.

Q. Were you given as part – you said you examined – I think you told us you examined 32 things? 32 exhibits?

A. Yes.

Q. Were any of those exhibits that you examined this firing [312] mechanism for the RPGs that you had at your lab?

A. No. They were suspected firearms.

Q. Right. So they didn't – you didn't get like a firing mechanism for this thing that you were led to believe came anywhere from my client's house during the search warrant?

A. I did not.

Q. Okay. Then with regard to the M79 and the M203, you got those, snapped the barrel on and fired

them, correct? Or fired one of them? Which one did you fire?

A. I fired the M79 and I fired the M203 with the barrel that was part of that exhibit. And I also had a second barrel assembly for the M203 that I put on the receiver. So I fired three times. Three configurations.

Q. And the 40mm, the fact it's 40mm is what in the ATF's world makes it a destructive device, correct?

A. The fact it has a bore over half of an inch and that it's a weapon makes it a destructive device. The fact that it's a 40mm rifled bore for all three barrels, that's what makes a weapon, as opposed to a 37mm or a 38mm signaling device.

Q. So you would agree that a 37- or 38mm barrel attached to those same receivers would not be a weapon as far as the ATF's concerned?

A. If they did not contain rifling or the presence of antipersonnel ammunition.

Q. And you don't know whether there were any of those kind of [313] barrels in my client's place when it was searched that didn't get seized or didn't get sent to you?

A. Are you talking about the signaling device barrels?

Q. Barrels less than 40mms, you didn't get any of those to examine?

A. I did not.

Q. Did you get the replica M79 receiver to examine?

A. I did not.

Q. Did you get a replica M203 to examine?

A. I got an actual M203 receiver.

Q. So the answer to my question is no –

A. Correct.

Q. – you did not get one?

Do you know if those were in my client's home when the search was conducted? Replicas?

A. I do not. I was not present during the search warrant.

Q. And finally on that, you don't know where in terms of physical proximity or storage where the barrels you got were stored vis-a-vis where the receivers were? You didn't conduct the search?

A. No. My examination was based on the exhibits I received as

I received them.

Q. Let's now go – the United States asked you – let me ask you a question though. You all got 12,000 firearms up there, give or take, in your library or your –

APPENDIX R

[326] didn't need to fire to be a destructive device, the tube itself is a weapon, and it wasn't destroyed, so it never ceased to be a destructive device.

Q. And I think you did mention that on cross, that the – it doesn't matter whether it fires or not; is that right?

A. Correct. If it's missing some component parts it's not – it wasn't relevant to the classification as a destructive device.

Q. And you also mentioned on cross that the test firing wasn't even needed in your examination?

A. No. It was more of a demonstration, to demonstrate the weapon's functional and, you know, it can be shot. It's not destroyed. There's various things that need to be done to a weapon to destroy it, and it wasn't done.

Q. And for the RPG-7s, what needs to be done to destroy that?

A. Under the law, to destroy a firearm, if it's destroyed it ceases to be what it is. For a firearm to be destroyed, it needs to be completely crushed, melted, smelted or shredded. If somebody does not have the means to be able to completely crush, melt or shred a firearm, they can contact our office and, on an individual basis, we will issue alternate destruction diagrams. We're authorized that power.

And for the RPG-7, to destroy an RPG-7, the firing pin channel, that was to be drilled out to a half of an inch, and that hole needs to continue to the top of the tube of the [327] receiver. And in place of those two half-inch holes that you just made, a half-inch steel rod

needs to be completely welded in place. That prohibits even the installation of the munition.

Additionally, a hole equal to or greater than the diameter of the bore must be drilled in the high-pressure area of the RPG-7. It's typically no more than six inches rear of the rear grip on the bottom or the left side.

Q. And you mentioned that hole, how big does that hole need to be?

A. Equal to or greater than the diameter of the bore. In this case, that's 40mms approximately. So 1.6 inches, roughly.

Q. And I think you mentioned this on cross, but how big was that hole that was in the RPG-7?

A. 0.39 inches.

Q. So not quite as big as needed?

A. No. Not nearly big enough.

And also the other part of the destruction wasn't completed, which was the obstruction welded through the firing pin channel. Both of those must be present for the weapon to be destroyed.

MS. LIU: And if we can pull up Exhibit 121? I believe these findings are on Page 7 of that report.

Can you highlight it? The bottom part.

BY MS. LIU:

Q. All right. So this is where you've documented your

APPENDIX S

Title 26. Internal Revenue Code
Subtitle E. Alcohol, Tobacco, and
Certain Other Excise Taxes
Chapter 53. Machine Guns, Destructive Devices,
and Certain Other Firearms
Subchapter B. General Provisions and Exemptions
Part I. General Provisions

Effective: February 1, 2019

Currentness

26 U.S.C.A. § 5845. Definitions

For the purpose of this chapter—

(a) Firearm.—The term "firearm" means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

(b) Machinegun.—The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

(c) Rifle.—The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(d) Shotgun.—The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(e) Any other weapon.—The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell,

weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

(f) Destructive device.—The term "destructive device" means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellent charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 7684(2), 7685, or 7686 of title 10, United States Code; or any other device which the Secretary finds is

not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

(g) Antique firearm.—The term "antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(h) Unserviceable firearm.—The term "unserviceable firearm" means a firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

(i) Make.—The term "make", and the various derivatives of such word, shall include manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a firearm.

(j) Transfer.—The term "transfer" and the various derivatives of such word, shall include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of.

(k) Dealer.—The term "dealer" means any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning fire-

arms and shall include pawnbrokers who accept firearms as collateral for loans.

(l) Importer.—The term "importer" means any person who is engaged in the business of importing or bringing firearms into the United States.

(m) Manufacturer.—The term "manufacturer" means any person who is engaged in the business of manufacturing firearms.

Title 26. Internal Revenue Code
Subtitle E. Alcohol, Tobacco, and Certain Other Excise Taxes
Chapter 53. Machine Guns, Destructive Devices, and Certain Other Firearms
Subchapter C. Prohibited Acts

Currentness

26 U.S.C.A. § 5861. Prohibited acts

It shall be unlawful for any person—

(a) to engage in business as a manufacturer or importer of, or dealer in, firearms without having paid the special (occupational) tax required by section 5801 for his business or having registered as required by section 5802; or

(b) to receive or possess a firearm transferred to him in violation of the provisions of this chapter; or

(c) to receive or possess a firearm made in violation of the provisions of this chapter; or

(d) to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record; or

(e) to transfer a firearm in violation of the provisions of this chapter; or

(f) to make a firearm in violation of the provisions of this chapter; or

(g) to obliterate, remove, change, or alter the serial number or other identification of a firearm required by this chapter; or

(h) to receive or possess a firearm having the serial number or other identification required by this

chapter obliterated, removed, changed, or altered; or

(i) to receive or possess a firearm which is not identified by a serial number as required by this chapter; or

(j) to transport, deliver, or receive any firearm in interstate commerce which has not been registered as required by this chapter; or

(k) to receive or possess a firearm which has been imported or brought into the United States in violation of section 5844; or

(l) to make, or cause the making of, a false entry on any application, return, or record required by this chapter, knowing such entry to be false.

Title 26. Internal Revenue Code
Subtitle E. Alcohol, Tobacco, and Certain Other Excise Taxes
Chapter 53. Machine Guns, Destructive Devices, and Certain Other Firearms
Subchapter D. Penalties and Forfeitures

Currentness

26 U.S.C.A. § 5871. Penalties

Any person who violates or fails to comply with any provision of this chapter shall, upon conviction, be fined not more than $10,000, or be imprisoned not more than ten years, or both.

Constitution of the United States

Amendment II. Keeping and Bearing Arms

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment V. Grand Jury; Double Jeopardy; Self-Incrimination; Due Process; Takings

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI. Jury trials for crimes, and procedural rights [Text & Notes of Decisions subdivisions I to XXII]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Federal Rules of Criminal Procedure for the
United States District Courts
Title III. The Grand Jury, the Indictment,
and the Information
Federal Rules of Criminal Procedure, Rule 7

Currentness

Rule 7. The Indictment and the Information

(a) When Used.

(1) Felony. An offense (other than criminal contempt) must be prosecuted by an indictment if it is punishable:

(A) by death; or

(B) by imprisonment for more than one year.

(2) Misdemeanor. An offense punishable by imprisonment for one year or less may be prosecuted in accordance with Rule 58(b)(1).

(b) Waiving Indictment. An offense punishable by imprisonment for more than one year may be prosecuted by information if the defendant—in open court and after being advised of the nature of the charge and of the defendant's rights—waives prosecution by indictment.

(c) Nature and Contents.

(1) In General. The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government. It need not contain a formal introduction or conclusion. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or

that the defendant committed it by one or more specified means. For each count, the indictment or information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. For purposes of an indictment referred to in section 3282 of title 18, United States Code, for which the identity of the defendant is unknown, it shall be sufficient for the indictment to describe the defendant as an individual whose name is unknown, but who has a particular DNA profile, as that term is defined in section 3282.

(2) Citation Error. Unless the defendant was misled and thereby prejudiced, neither an error in a citation nor a citation's omission is a ground to dismiss the indictment or information or to reverse a conviction.

[(3) Redesignated (2)]

(d) Surplusage. Upon the defendant's motion, the court may strike surplusage from the indictment or information.

(e) Amending an Information. Unless an additional or different offense is charged or a substantial **right** of the defendant is prejudiced, the court may permit an information to be amended at any time before the verdict or finding.

(f) Bill of Particulars. The court may direct the government to file a **bill** of particulars. The defendant may move for a bill of particulars before or within 14 days after arraignment or at a later time if the court permits. The government may amend a bill of particulars subject to such conditions as justice requires.