

APPENDIX A**1a****PUBLISHED****UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 24-4300

UNITED STATES OF AMERICA,

Plaintiff – Appellant,

v.

STEVEN NICHOLAS FULTON,

Defendant – Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. Terrence W. Boyle, District Judge. (4:23-cr-00048-BO-BM-1)

Argued: December 11, 2024

Decided: May 6, 2025

Before AGEE, QUATTLEBAUM, and RUSHING, Circuit Judges.

Reversed and remanded by published opinion. Judge Rushing wrote the opinion, in which Judge Agee and Judge Quattlebaum joined.

ARGUED: Katherine Simpson Englander, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellant. Jaclyn L. Tarlton, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellee. **ON BRIEF:** Michael F. Easley, Jr., United States Attorney, David A. Bragdon, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellant. G. Alan DuBois, Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellee.

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RUSHING, Circuit Judge:

A jury convicted Steven Fulton of knowingly making a false statement in connection with the attempted acquisition of a firearm. At trial, the Government introduced evidence that, on a background check form at a gun shop in North Carolina, Fulton denied having any felony convictions, despite having a prior felony conviction in New Jersey. The district court, however, overturned the jury's verdict and entered a judgment of acquittal because the Government did not present evidence to the jury demonstrating that Fulton's New Jersey offense was punishable by more than a year in prison. In the event this Court disagreed with that decision, the district court conditionally granted Fulton a new trial. The district court erred in both respects. We reverse and remand with instructions to reinstate the jury's verdict.

I.

To purchase a firearm from a federally licensed dealer, an individual must complete a form created by the Bureau of Alcohol, Tobacco, and Firearms (ATF) to facilitate a background check through the National Instant Criminal Background Check System (NICS). One question on the ATF form asks whether the prospective purchaser has been convicted of a felony or any other crime punishable by more than one year in prison. If the individual marks "Yes" in response to that question, the dealer should not sell the person a firearm and need not even enter his information in the NICS. If the prospective purchaser marks "No," indicating that he has not been convicted of a felony, the dealer enters his information into the system and awaits the result of the instant background check. The NICS then generates one of four possible responses: "Proceed," "Delayed," "Denied,"

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or “Canceled.” If the system produces a “Denied” response, the dealer may not sell the individual a firearm. The NICS does not inform the dealer of the reason for the denial.

Between January and August 2023, Fulton attempted to buy guns from federally licensed firearm dealers eleven times. He tried five different stores and used a different sales associate for every repeat visit to the same store. Each time, he completed the ATF form and marked “No” in response to question 21(e), which asks “Have you ever been convicted in any court . . . of a felony, or any other crime for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation?” Each time the NICS returned a “Denied” response and Fulton was unable to complete his purchase.

Fulton’s repeated attempts to buy firearms caught the ATF’s attention. So, after Fulton’s eighth attempt, ATF agent Daryl Cato sent an officer with the Greene County Sheriff’s Office to Fulton’s residence on June 23, 2023. While the officer was there, Agent Cato called the officer’s phone and spoke with Fulton. Agent Cato told Fulton that he was calling because Fulton had attempted to purchase a firearm while being a prohibited person and that Fulton was prohibited from buying a gun “because he had a felony out of New Jersey.” J.A. 119.

Over the next few weeks, Fulton attempted to purchase firearms two more times. Agent Cato then personally visited Fulton at his residence on July 11, 2023. Agent Cato instructed Fulton to stop trying to buy firearms because he was prohibited from doing so as a felon. Agent Cato would later testify regarding this interaction that Fulton “seem[ed] to understand that he was a convicted felon.” J.A. 121. Fulton responded that he had a

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meeting scheduled with the government to clear things up. Before leaving, Agent Cato warned Fulton that he could be prosecuted if he tried to buy a gun again.

On August 7, 2023, Fulton attempted to purchase a firearm for the eleventh time. He again completed the ATF form and marked that he had not been convicted of a felony. The sales associate submitted his form to the NICS, and the response was, again, “Denied.”

Based on the August 7 attempted purchase, the Government charged Fulton with one count of knowingly making a false statement in connection with the attempted acquisition of a firearm that was material to the lawfulness of the sale, in violation of 18 U.S.C. §§ 922(a)(6) and 924. Fulton pleaded not guilty and proceeded to trial.

At trial, the Government introduced a certified copy of Fulton’s 2007 criminal judgment from New Jersey. In addition to stating Fulton’s name and date of birth, the judgment identifies the offense of conviction as “Unlawful Possession of a Weapon-Handgun,” categorizes it as a third-degree offense, and lists the statute of conviction: New Jersey Statutes § 2C:39-5(b). The judgment reflects that Fulton received credit for thirteen days spent in custody and was sentenced to two years’ probation. The judgment does not include the word “felony” or identify the statutory penalty range for the offense.

The Government called various witnesses, including Agent Cato, to establish the facts described above. Agent Cato also testified that he was familiar with Fulton’s criminal history, having reviewed it before he contacted Fulton for the first time in June 2023. While examining the New Jersey criminal judgment, Agent Cato testified it reflected that Fulton “was convicted of a felony” in “[t]he third degree.” J.A. 123. When the Government asked how many years a third-degree felony is punishable by, defense counsel objected that

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Agent Cato was “not qualified as a legal scholar of [New] Jersey law.” J.A. 123. The district court sustained the objection and did not allow Agent Cato to testify about the applicable penalties.

After the Government rested, Fulton moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29. Defense counsel argued that the Government had failed to prove Fulton made a false statement because its evidence was insufficient to show Fulton’s New Jersey conviction was, in fact, a felony. Counsel further argued that the Government had not provided enough evidence for the jury to conclude that Fulton knew he was a felon.

The Government countered that the New Jersey conviction was a felony as a matter of law and cited the relevant New Jersey statute, which provides that Fulton’s crime was punishable by up to five years in prison. *See* N.J. Stat. Ann. § 2C:43-6(a)(3). Defense counsel objected that the New Jersey statute “was never entered into evidence.” J.A. 151. The Government responded, “[T]his is a legal question; it’s not a factual question.” J.A. 151.

Fulton rested without presenting any evidence and renewed his Rule 29 motion. The district court deferred ruling on the motion. But the district court denied the Government’s request for a jury instruction that the New Jersey crime is a felony punishable by more than one year in prison, explaining, “I’m not going to do that because you didn’t put that into evidence, and I’m not going to comment on evidence that was not in the case.” J.A. 158. The jury found Fulton guilty.

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After trial, the district court granted Fulton’s pending motion for acquittal. The court held that the New Jersey criminal judgment was not proof that Fulton had committed a felony because the judgment did not define a third-degree offense, did not include the word “felony,” and did not identify the maximum punishment for the offense. Further, the court reasoned, the Government had not introduced any other evidence to prove the maximum punishment for the offense, nor had it asked the district court “to take judicial notice of the statutory penalties.” J.A. 252–253. Accordingly, the district court concluded that the Government had failed to present evidence from which the jury could determine that the New Jersey offense was a felony and Fulton’s statement on the ATF form was therefore false.

Next, the district court ruled that, if this Court were to reverse the acquittal, a new trial would be warranted “in light of the absence of proof of Fulton’s knowledge” that he was a felon. J.A. 254; *see* Fed. R. Crim. P. 29(d). The court reasoned that “a jury will usually find that a defendant *knew* he was a felon based on the fact that he *was* a felon,” and the evidence was insufficient to prove Fulton’s knowledge, given the probationary sentence he received and “the absence . . . of an indication” on the criminal judgment “that the conviction was a felony or that the possible sentence could exceed one year of imprisonment.” J.A. 254 (internal quotation marks omitted). Finally, the court concluded, if Fulton lacked knowledge that his statement was false, then he did not act with intent to deceive.

The Government appealed, and we have jurisdiction. *See* 28 U.S.C. § 1291.

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II.

We review the district court’s grant of acquittal de novo. *United States v. Millender*, 970 F.3d 523, 528 (4th Cir. 2020). A judgment of acquittal is improper if, ““after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime[] beyond a reasonable doubt.”” *United States v. Rafiekian*, 991 F.3d 529, 544 (4th Cir. 2021) (*Rafiekian I*) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

To establish that Fulton violated 18 U.S.C. § 922(a)(6), the Government was required to prove he (1) knowingly made (2) a false or fictitious statement (3) that was material to the legality of the firearm transaction and (4) was intended or likely to deceive the firearms dealer. *United States v. Abramski*, 706 F.3d 307, 315 (4th Cir. 2013), *aff’d*, 573 U.S. 169 (2014). The district court’s judgment of acquittal turned on the second element, the existence of a false statement. Because the allegedly false statement was that Fulton was not a felon, the Government had to prove that Fulton *was* a felon.

The Government did so. It introduced a certified criminal judgment demonstrating that Fulton pleaded guilty in 2007 to unlawful possession of a weapon, a third-degree offense, in violation of New Jersey Statutes § 2C:39-5(b). Under New Jersey law, a third-degree offense is punishable by up to five years’ imprisonment. N.J. Stat. Ann. § 2C:43-6(a)(3); *see also id.* §§ 2C:43-2(b), 2C:44-1; *State v. Natale*, 878 A.2d 724, 738 n.10, 741 (N.J. 2005); *United States v. Cordero*, 632 Fed. App. 121, 122–123 (4th Cir. 2015). As Agent Cato testified without objection, that offense is a felony. Fulton marked on the ATF

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form that he had not been convicted of a felony or any crime for which he could have been punished with more than one year of imprisonment. That statement was false.

The district court erred in holding that the Government was required to present evidence proving to the jury as a factual matter the statutory penalties for Fulton's offense. Whether a crime is punishable by more than one year in prison is a question of law for the judge to determine. *United States v. Jenkins*, 792 F.3d 931, 935 (8th Cir. 2015); *see also United States v. Broadnax*, 601 F.3d 336, 345 (5th Cir. 2010); *United States v. Flower*, 29 F.3d 530, 535 (10th Cir. 1994); *cf. United States v. Hopkins*, 310 F.3d 145, 154 (4th Cir. 2002) (reasoning that whether the defendant's prior crimes "were subject to maximum penalties of at least ten years" was a "question of law"). It is not a question of fact to be decided by the jury based on competing evidence at trial.¹ Indeed, it is untenable to put the question of applicable statutory penalties to the jury, such that this New Jersey offense could be found punishable by more than one year in prison in one case but not in another. The maximum statutory penalty for the crime is a legal question.

Because the question is legal in nature, the district court was empowered to consider whatever authorities or sources it needed to resolve it, without regard to whether such sources were admitted into evidence or subject to judicial notice. *See* Fed. R. Evid. 201(a) advisory committee's note to 1972 proposed rules ("In determining the content or

¹ For that reason, *United States v. Essick*, 935 F.2d 28 (4th Cir. 1991), is irrelevant. The question in *Essick* was which party bore the burden of proving a *fact* (in that case, the date of the defendant's release), which derivatively affected whether the crime in question qualified as a predicate offense for a violation of 18 U.S.C. § 922(g)(1). *See* 18 U.S.C. § 921(a)(20). In contrast, the question here is purely legal: whether a given offense is punishable by more than a year's imprisonment.

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applicability of a rule of domestic law, the judge is unrestricted in his investigation and conclusion. He may reject the propositions of either party or of both parties. . . . He may make an independent search for persuasive data or rest content with what he has or what the parties present.” (quoting Edmund M. Morgan, *Judicial Notice*, 57 Harv. L. Rev. 269, 270 (1944))). The close of evidence did not constrain the district court from considering the content of New Jersey law in resolving Fulton’s Rule 29 motion.

In sum, the Government introduced evidence that Fulton was convicted in 2007 of unlawful possession of a handgun, a third-degree offense, in violation of New Jersey Statutes § 2C:39-5(b). As a matter of law, that offense is a felony punishable by more than one year in prison.² The district court therefore erred in concluding that the Government failed to present substantial evidence to prove that Fulton had been convicted of a felony such that his statement to the contrary on the ATF form was false. The judgment of acquittal was in error.

III.

We turn next to the district court’s conditional grant of a new trial. Rule 29 requires a district court that grants a judgment of acquittal after a guilty verdict to “conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed.” Fed. R. Crim. P. 29(d)(1). A district court may grant a new trial “if the interest of justice so requires.” Fed. R. Crim. P. 33(a). “In this posture, a

² The district court erred by not delivering the Government’s requested jury instruction to this effect. But that instructional error does not require a new trial in this instance because the jury nevertheless had a sufficient evidentiary basis to conclude that Fulton was a felon and that his statement to the contrary was false.

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court’s authority is much broader than when it is deciding a motion to acquit.” *Rafiekian I*, 991 F.3d at 549 (internal quotation marks omitted). When determining whether a new trial is warranted, the district court may make a “discretionary assessment[] of the balance of the evidence,” functionally sitting as a “thirteenth juror.” *United States v. Rafiekian*, 68 F.4th 177, 186–187 (4th Cir. 2023) (*Rafiekian II*) (internal quotation marks omitted).

Even with this wider latitude, however, a district court may not lightly discard a jury verdict. The standard “for jettisoning a jury verdict in favor of a new trial” is “demanding,” and “a ‘court should exercise its discretion to grant a new trial sparingly.’” *Millender*, 970 F.3d at 531–532 (quoting *United States v. Palin*, 874 F.3d 418, 423 (4th Cir. 2017)). A district court may grant a new trial based on the weight of the evidence only “in the rare circumstance” when “the evidence weighs so heavily against the verdict that it would be unjust to enter judgment.” *United States v. Singh*, 518 F.3d 236, 249 (4th Cir. 2008) (internal quotation marks omitted); *Millender*, 970 F.3d at 531 (internal quotation marks omitted); *Rafiekian II*, 68 F.4th at 186; *see also Tibbs v. Florida*, 457 U.S. 31, 38 n.11 (1982) (explaining that a court may set aside a verdict and grant a new trial if “the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred” (internal quotation marks omitted)).

We review the conditional grant of a new trial for abuse of discretion. *Rafiekian II*, 68 F.4th at 187. A district court abuses its discretion when it acts arbitrarily or irrationally, fails to consider judicially recognized factors constraining its exercise of discretion, relies on faulty legal or factual premises, or reaches a decision “outside the bounds of reasonable disagreement.” *United States ex rel. Nicholson v. MedCom Carolinas, Inc.*, 42 F.4th 185,

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197–198 (4th Cir. 2022); *United States v. Dillard*, 891 F.3d 151, 158 (4th Cir. 2018); *see also Evans v. Eaton Corp. Long Term Disability Plan*, 514 F.3d 315, 322 (4th Cir. 2008). Under this standard, we may not simply “substitute our judgment for the district court’s.” *Rafiekian II*, 68 F.4th at 187. Nonetheless, a judgment that is so “fundamentally wrong” as to be “unsupportable” rather than “merely mistaken” constitutes an abuse of discretion subject to reversal. *Nicholson*, 42 F.4th at 198 (internal quotation marks omitted); *Evans*, 514 F.3d at 322.

The district court granted a new trial because it perceived an “absence of proof of Fulton’s knowledge” that he was a felon. J.A. 254. That conclusion is “unsupportable.” *Evans*, 514 F.3d at 322. The Government *did* present proof of Fulton’s knowledge. First, the Government introduced evidence that Fulton is a felon, and “[i]f a person is a felon, he ordinarily knows he is a felon.” *Greer v. United States*, 593 U.S. 503, 508 (2021). The district court’s failure to credit this evidence flows from its error in concluding, on the acquittal motion, that the Government failed to present evidence sufficient to prove that Fulton’s prior conviction was a felony. As described above, that ruling was erroneous.

Second, Agent Cato testified that he personally told Fulton he was a felon, twice, in 2023 and that Fulton seemed to understand that fact. Although the district court acknowledged Agent Cato’s testimony, the court never evaluated its effect on Fulton’s knowledge or addressed why the court did not consider that testimony at least some “proof of Fulton’s knowledge.” J.A. 254. The court did not explain if or why it discounted Agent Cato’s testimony, nor did the court ever weigh his testimony “with the evidence as a whole.” *Rafiekian II*, 68 F.4th at 189.

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Third, the Government presented evidence that, on ten prior occasions, with ten different sales associates, Fulton had attempted to purchase firearms and been denied because he failed the background check. That is at least circumstantial evidence that Fulton knew he was prohibited from owning a firearm. Of course, the district court observed the trial and was entitled to make its own “discretionary assessment[]” of this evidence in the overall evidentiary balance, which would command our deference. *Rafiekian II*, 68 F.4th at 187 (internal quotation marks omitted). But the court made no such assessment.

The district court focused exclusively on Fulton’s 2007 sentence—two years’ probation and credit for thirteen days spent in custody—and the text of the criminal judgment. As it did with the acquittal motion, the court emphasized that the judgment did not contain the word “felony” or an indication “that the possible sentence could exceed one year of imprisonment.” J.A. 254. Those are legitimate considerations for assessing Fulton’s knowledge of his felony status. But the court never weighed that evidence against the other evidence in the record. “[A] motion for a new trial based on the weight of the evidence invites the court to . . . evaluate the persuasiveness of the inculpatory evidence in comparison with other evidence.” *Rafiekian II*, 68 F.4th at 189 (internal quotation marks and emphasis omitted). “Such a global assessment of the evidence requires the court to weigh whatever evidence it has before it.” *Id.* The district court here did not engage in this global assessment. Nor did the court ever conclude that ““the evidence weigh[ed] so heavily against the verdict that it would be unjust to enter judgment.”” *Millender*, 970 F.3d at 531 (quoting *United States v. Arrington*, 757 F.2d 1484, 1485 (4th Cir. 1985)).

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At bottom, the district court abused its discretion in two distinct ways. First, the court did not assess the evidence as a whole or apply the relevant standard for granting a new trial based on the weight of the evidence. Were those the only errors, we might be inclined to vacate and remand for the district court to conduct its analysis afresh. *See, e.g., Rafiekian*, 68 F.4th at 185–186. But the district court abused its discretion in a second way, by reaching a decision “outside the bounds of reasonable disagreement.” *Nicholson*, 42 F.4th at 198. Given the evidence adduced at trial—showing that Fulton had been convicted of a felony (though he received a sentence of probation), that he had attempted numerous times to purchase firearms and had been denied because he failed the background check, and that Agent Cato had twice personally told Fulton he was a felon prohibited from purchasing a gun—no reasonable jurist could conclude that the evidence “weigh[ed] so heavily against the verdict that it would be unjust to enter judgment.”³ *Rafiekian II*, 68 F.4th at 186 (internal quotation marks omitted). The jury was not required to find Fulton guilty. But it did, and the evidence amply supports its verdict. We therefore reverse the district court’s conditional award of a new trial and remand for the verdict to be reinstated. *See, e.g., Singh*, 518 F.3d at 251.

³ The district court further erred by concluding, in one sentence, that the evidence also would not support a finding that Fulton completed the ATF form with intent to deceive. Evidence that Fulton falsely stated on the form that he had no felony convictions, did so knowingly, and then submitted the form to a firearms dealer in an effort to purchase a gun supports a finding of intent to deceive the dealer. *See Abramski*, 706 F.3d at 315 (observing that the false statement must be “intended to deceive or likely to deceive a firearms dealer” (internal quotation marks omitted)); *see also* 18 U.S.C. § 922(a)(6).

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IV.

For the foregoing reasons, we reverse the district court's grant of Fulton's motion for a judgment of acquittal, reverse the conditional grant of a new trial, and remand with instructions to reinstate the jury's verdict.

REVERSED AND REMANDED

APPENDIX B

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 4:23-CR-48-1BO

UNITED STATES OF AMERICA

v.

STEVEN FULTON

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ORDER

This cause comes before the Court on defendant's motion pursuant to Rule 29 of the Federal Rules of Criminal Procedure. Defendant, Fulton, has filed a brief in support of his motion, the government has responded in opposition, and Fulton has filed a reply. In this posture, the matter is ripe for ruling. For the reasons that follow, the motion is granted.

BACKGROUND

On September 7, 2023, an indictment was filed charging Fulton with violating 18 U.S.C. §§ 922(a)(6) and 924 by knowingly making a false statement to a federally licensed firearms dealer in connection with the acquisition of a firearm. [DE 1]. The conduct charged took place on August 7, 2023. *Id.* Fulton entered a plea of not guilty on January 3, 2024. [DE 29].

A jury trial commenced on February 7, 2024. [DE 44]. The government presented its case in chief, which included the testimony of three witnesses: David Jones, Deborah Hines, and Daryl Cato. The following is a summary of the witness testimony.

David Jones, an investigator with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), testified generally regarding the purposes of a firearms transaction record referred to as an ATF Form 4473. An ATF Form 4473 includes sections that are to be completed by the gun dealer or licensee as well as the customer seeking to purchase a firearm. The information

to be completed by the purchaser includes questions regarding prohibited status, including whether the purchaser has previously been convicted of a felony, or a crime punishable by a term of imprisonment exceeding one year.

Deborah Hines was working at Carolina Caliber, a federally licensed firearms dealer, on August 7, 2023, the date of the conduct charged in the indictment. She witnessed Fulton complete the ATF Form 4473 on the computer and submit it electronically to the FBI. After the ATF Form 4473 was submitted, Fulton's application was denied, and Hines did not sell a firearm to Fulton. Both Jones and Hines testified that if the response to the submission of ATF Form 4473 is "denied," no reason is given for the denial.

Daryl Cato, an ATF Task Force Officer, testified regarding Fulton's prior attempts to purchase a firearm and Officer Cato's own investigation into and conversations with Fulton. In June and July 2023, Fulton had twice attempted to purchase a firearm from a federally licensed firearm dealer and submitted an ATF Form 4473. On both occasions his ATF Form 4473 was returned as "denied" and Fulton was unable to purchase a firearm. Officer Cato testified that he called Fulton on June 23, 2023, and informed Fulton that he had attempted to purchase a firearm as a prohibited person. Officer Cato also testified that on July 11, 2023, he spoke to Fulton at Fulton's home and told him to "quit trying to attempt to purchase a firearm . . . being a felon." [DE 50 p. 34]. Fulton responded that "he had a meeting set up with the government[.]" *Id.* p. 35. Admitted into evidence during the government's case in chief were several exhibits, including an ATF Form 4473 and a 2007 certified judgment of conviction from the State of New Jersey.

After the government rested, Fulton made an oral motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29. The Court took the motion under advisement. [DE 44]. Fulton did not call any witnesses or present any evidence. Fulton renewed his Rule 29 motion and the motion was

again taken under advisement. *Id.* The jury ultimately returned a verdict of guilty as to count one of the indictment. [DE 46, 47]. Fulton thereafter filed his brief in support of his renewed Rule 29 motion, the government responded in opposition, and Fulton replied.

DISCUSSION

Rule 29 of the Federal Rules of Criminal Procedure provides that

After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.

Fed. R. Crim. P. 29(a). Where, as here, the court has reserved a ruling on the motion for judgment of acquittal, it may decide the motion after the jury returns a verdict, and it must decide the motion based upon the evidence at the time that the ruling on the motion was reserved. *Id.* Rule 29(b). Finally, if a court grants a Rule 29 motion after entry of a guilty verdict, it “must also conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed” and state the reasons for so deciding. Fed. R. Crim. P. 29(d).

A. Rule 29; insufficiency of the evidence

A judgment of acquittal must be granted when, after viewing the evidence in the light most favorable to the government, the evidence is insufficient for any rational trier of fact to find the elements of the crime beyond a reasonable doubt. *Musacchio v. United States*, 577 U.S. 237, 243 (2016); *United States v. United Med. & Surgical Supply Corp.*, 989 F.2d 1390, 1402 (4th Cir. 1993); *see also United States v. Burfoot*, 899 F.3d 326, 334 (4th Cir. 2018) (verdict must be sustained where supported by substantial evidence). Credibility determinations, however, are solely within the province of the jury. *United States v. Lowe*, 65 F.3d 1137, 1142 (4th Cir. 1995).

To establish a violation of § 922(a)(6), the prosecution is obligated to prove four elements: “(1) the defendant knowingly made (2) a false or fictitious oral or written statement that was (3) material to the lawfulness of the sale or disposition of a firearm, and was (4) intended to deceive or likely to deceive a firearms dealer.”

United States v. Abramski, 706 F.3d 307, 315–16 (4th Cir. 2013) (quoting *United States v. Harvey*, 653 F.3d 388, 393 (6th Cir.2011)). To that end, and with the agreement of both parties, the Court instructed the jury that the government had to prove:

First, that on or about the date set forth in the indictment in connection with the acquisition of a firearm from a licensed dealer, the defendant made a written statement as evidenced by Bureau of Alcohol, Tobacco, Firearms Form 4473 [element one]. Second, that the statement was false or fictitious [element two]. Third, that the defendant knew such statement to be false [element three]. And fourth, that the false statement was intended or likely to deceive the dealer with respect to any fact material to the lawfulness of the sale of a firearm [element four].

[DE 50 pp. 112-113]; *see also* 2 Modern Federal Jury Instructions-Criminal P 35.06 (2023), Instruction 35-40.

Fulton argues that insufficient evidence supports elements two, three, and four because the government failed to put on evidence that Fulton's New Jersey conviction was punishable by a term of imprisonment exceeding one year.

The alleged false statement in this case was Fulton's statement on the ATF Form 4473 that he had not previously been convicted of a crime punishable by a term of imprisonment exceeding one year, or, in other words, that he had not previously been convicted of a felony. Thus, to prove that this statement was false, the government was required to prove that Fulton had, in fact, previously been convicted of a felony. To do so, the government offered into evidence a certified copy of a criminal judgment from the State of New Jersey during Officer Cato's testimony. The judgment, which was received into evidence, reflects that on March 5, 2007, Fulton pleaded guilty to the charge of third-degree unlawful possession of a weapon in violation of New Jersey law. The judgment reflects that Fulton was sentenced to time-served, amounting to thirteen days in custody, and two years of probation. There is no dispute that nothing appearing on the judgment of conviction indicates that Fulton was convicted of an offense punishable by a term of imprisonment

exceeding one year: the charge of conviction is not identified as a felony nor is any statutory punishment range listed. Though the government asked Officer Cato by how many years a New Jersey third-degree felony is punishable, Fulton objected and the Court sustained the objection. No other evidence was offered or admitted relating to the New Jersey conviction. Following the conclusion of Officer Cato's testimony, the government rested.

The government takes the position that the admission of the certified copy of the New Jersey judgment into evidence was sufficient to prove that Fulton was convicted of a crime punishable by a term of imprisonment exceeding one year. It contends that because, by law, the conviction is a felony, no additional evidence was needed for the government to sustain its burden to prove that Fulton's statement was false. In support of its argument, the government relies on cases which state that, in a prosecution for violation of 18 U.S.C. § 922(g)(1), an element of which is previous conviction of a felony, "if the defendant should not be willing to stipulate to the prior conviction, he could [r]equire the prosecution to prove such conviction by the prior record or judgment of conviction." *United States v. Poore*, 594 F.2d 39, 42 (4th Cir. 1979) (quoting *United States v. Kemper*, 503 F.2d 327, 329 n. 3 (6th Cir. 1974)). Thus, in the government's view, the admission of the New Jersey judgment alone was sufficient to support a jury instruction stating that the New Jersey crime of which Fulton was convicted was punishable by a term of imprisonment exceeding one year.

The Court agrees with the government that cases involving § 922(g)(1) prosecutions are instructive on this issue because the government must prove as an element of the offense the existence of a prior felony conviction. *See United States v. Gallimore*, 247 F.3d 134, 136 (4th Cir. 2001). Where a defendant has not stipulated to previously having been convicted of a crime punishable by more than a year of imprisonment, *see Old Chief v. United States*, 519 U.S. 172,

174 (1997), there are several ways in which the government might offer evidence to prove this element. These include offering testimony of a state probation officer, *United States v. Taylor*, 179 F. App'x 881, 883 (4th Cir. 2006), or testimony by a Clerk of Court, *United States v. Bates*, 730 F. App'x 281, 287 (6th Cir. 2017), or other court official. And while the government is correct that it may rely on official records to prove this element, those records must themselves demonstrate that the crime of conviction was punishable by a term of imprisonment exceeding one year, or else be coupled with some other evidence, such as the testimony of a witness competent to testify as to that fact. *See, e.g., United States v. Jenkins*, 792 F.3d 931, 934 (8th Cir. 2015) (“The evidence—the certified copy of the prior felony—shows Jenkins’s prior conviction as a class IV felony, punishable by more than one year in prison.”).¹ This Court has been presented with no case holding that the mere fact of conviction, without some evidence as to what statutory punishment range was available, is sufficient evidence on which the government may rely to satisfy its burden.

Because the Court reserved its ruling on the Rule 29 motion at the close of the government’s case in chief, it limits its analysis to the evidence admitted at that time. The government offered no additional evidence in its case in chief which would support a determination that Fulton’s New Jersey crime of conviction was punishable by more than one year in prison. After it was prevented from asking Officer Cato whether the crime of conviction carried a penalty of a term of imprisonment exceeding one year, it did not offer any additional documentary evidence or witness testimony on this issue. The parties dispute whether it would have been proper for the Court to take judicial notice of the available punishment under New Jersey law, but the Court need not decide this issue as the government did not ask it to take judicial notice

¹ In *Jenkins*, the Eighth Circuit also decided that it was not error for the district court to have instructed the jury on the definition of a felony under state law. In this case, however, the word “felony” does not appear on Fulton’s judgment.

of the statutory penalties, during its case in chief or at any other time. *But see United States v. Bryant*, 329 F. App'x 435, 436 (4th Cir. 2009) (“A court may take judicial notice of statutory penalties.”); *United States v. Gavegnano*, 305 F. App'x 954, 956 (4th Cir. 2009) (authority to take judicial notice of legislative facts is unquestionable).²

The Court determines that, even viewing the evidence in the light most favorable to the government, the government failed to present substantial evidence to prove that Fulton had been convicted of a crime punishable by a term of imprisonment exceeding one year, and that his statement to the contrary on the ATF Form 4473 was therefore false. As substantial evidence does not support the jury’s determination that each element of the crime has been established beyond a reasonable doubt, a judgment of acquittal is required.

B. Conditional order for new trial

Rule 33 permits a new trial upon the discovery of new evidence or when it would be in the interest of justice. “The decision to grant or deny a motion for new trial is within the broad discretion of the district court.” *United States v. Tucker*, 376 F.3d 236, 238 (4th Cir. 2004). Unlike a Rule 29 motion, when considering a motion for new trial, a court need not construe the evidence in the government’s favor, and it may sit as the “thirteenth juror” to “conduct[] its own assessment of the evidence.” *United States v. Rafiekian*, 68 F.4th 177, 186 (4th Cir. 2023) (quoting *United States v. Arrington*, 757 F.2d 1484, 1485 (4th Cir. 1985)). “Nevertheless, the ‘standard for jettisoning a jury verdict in favor of a new trial’ remains ‘demanding,’ and courts must exercise their discretion to do so ‘sparingly.’” *United States v. Rafiekian*, 991 F.3d 529, 549 (4th Cir. 2021) (quoting *United States v. Millender*, 970 F.3d 523, 531-32 (4th Cir. 2020)).

² Though a court *may* take judicial notice of a legislative fact, the Court is unaware of any requirement that it do so *sua sponte*, especially where, as here, the government argued to the Court that it could *not* take judicial notice of the statutory penalties at issue.

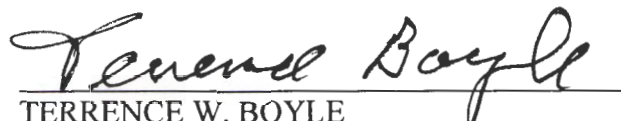
If the Court's Rule 29 determination that the government presented insufficient proof that Fulton made a false statement is reversed, the Court nonetheless determines that a new trial would be warranted in light of the absence of proof of Fulton's knowledge that the statement was false. As discussed above, nothing on the face of the New Jersey judgment indicates Fulton pleaded guilty to a crime punishable by a term of imprisonment exceeding one year. Fulton only served a custodial sentence of thirteen days.

The government elicited testimony from Officer Cato that Officer Cato had told Fulton that he was a felon. Recognizing that "absent a reason to conclude otherwise, a jury will usually find that a defendant *knew* he was a felon based on the fact that he *was* a felon," *Greer v. United States*, 141 S. Ct. 2090, 2097 (2021), the Court determines that insufficient evidence was presented to show that, in light of the sentence he received and the absence on the judgment of an indication that the conviction was a felony or that the possible sentence could exceed one year of imprisonment, the government did not prove that *Fulton knew* that he had been convicted of a crime punishable by imprisonment for a term exceeding one year, and thus that he knew that his statement on the ATF Form 4473 was false. *See, e.g., United States v. Barronette*, 46 F.4th 177, 200–01 (4th Cir. 2022) (in § 922(g)(1) prosecution, discussing knowledge-of-felon-status element where defendant had previously been convicted only of state misdemeanors and had not served more than two years in prison, noting that record lacked any evidence that defendant knew the punishment range for his convictions) (citing 18 U.S.C. § 921(a)(20)). And, if Fulton lacked knowledge that he was making a false statement, the government evidence would not support that he completed the ATF Form 4473 in the manner that he did with the intent to deceive. Accordingly, the Court would conditionally grant a new trial.

CONCLUSION

For the foregoing reasons, defendant's motion for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure is GRANTED. A new trial is conditionally granted in the event that the judgment of acquittal is reversed or vacated.

SO ORDERED, this 29 day of April 2024.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	File No.
)	4:23-CR-00048-BO
v.)	
)	
STEVEN NICHOLAS FULTON,)	
)	
<i>Defendant.</i>)	

WEDNESDAY, FEBRUARY 7, 2024
JURY TRIAL - DAY 1
BEFORE THE HONORABLE TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

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United States District Court
Raleigh, North Carolina
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(Wednesday, February 7, 2024, at 11:14 a.m.)

P R O C E E D I N G S

THE COURT: Ladies and gentlemen, now that

you've been sworn, I'll give you some preliminary

instructions to guide you in your participation in the

trial. It will be your duty to find from the evidence

what the facts are. You and you alone are the judge of

the facts. You will then have to apply those facts to

the law. I will give you instructions on the law. You

have to follow the law whether you agree with it or not.

Nothing that I say or do during the course of the trial

is intended to indicate nor should it be taken by you as

indicating what your verdict should be.

The evidence from which you will find the

facts will consist of the testimony of witnesses,

documents, and other things received into the record as

exhibits, and any facts that the lawyers agree or

stipulate to or that the Court instructs you to find.

Certain things are not evidence and should

not be considered by you. I'll list these for you now.

The statements, arguments, and questions by the lawyers

are not the evidence in the case. Objections to

questions are not evidence. Lawyers have an obligation

to their client to make an objection when they believe

evidence is being offered that's inadmissible under the

11:15:36 1 Rules of Evidence. You should not be influenced by the
11:15:39 2 objection or by the Court's ruling on it. If the
11:15:42 3 objection is sustained, ignore the question; if it's
11:15:45 4 overruled, treat the answer as you would any other. If
11:15:49 5 you are instructed that some item of evidence is
11:15:51 6 received for a limited purpose only, you have to follow
11:15:53 7 that instruction. Testimony that the Court excludes or
11:15:57 8 tells you to disregard is not evidence and should not be
11:16:00 9 considered by you.

11:16:03 10 And finally, anything that you may have
11:16:05 11 heard or seen outside of the courtroom is not the
11:16:08 12 evidence in the case and should not be considered by
11:16:11 13 you. You're to decide the case solely on the evidence
11:16:14 14 presented here in court. Generally speaking, there are
11:16:18 15 two kinds of evidence: direct evidence and
11:16:21 16 circumstantial evidence. Direct evidence is direct
11:16:24 17 proof of a fact, such as the testimony of an eyewitness.
11:16:28 18 Circumstantial evidence is proof of facts from which you
11:16:31 19 may infer or conclude that other facts exist. I will
11:16:37 20 give you further instructions on these as well as other
11:16:40 21 matters at the end of the case, but bear in mind that
11:16:42 22 you may consider both kinds of evidence. It will be up
11:16:46 23 to you to decide which witnesses you believe, which
11:16:49 24 witnesses you may not believe, and how much of any
11:16:53 25 witness's testimony you accept or reject. I will give

11:16:55 1 you some guidelines for determining the credibility of
11:16:57 2 witnesses at the end of the case.

11:17:00 3 As you know, this is a criminal case. There
11:17:03 4 are some basic rules about criminal cases that you need
11:17:06 5 to keep in mind. First, the defendant is presumed
11:17:11 6 innocent until proven guilty. The indictment brought by
11:17:14 7 the Government against the defendant is only an
11:17:16 8 accusation. Nothing more. It's not proof of guilt or
11:17:21 9 of anything else. The defendant starts out with a clean
11:17:24 10 slate. The burden of proof is on the Government until
11:17:27 11 the very end of the case. The defendant has no burden
11:17:31 12 to prove his innocence or to present any evidence or to
11:17:35 13 testify.

11:17:36 14 The defendant has the right to remain
11:17:38 15 silent. The law prohibits you in arriving at your
11:17:42 16 verdict from considering whether a defendant may or may
11:17:45 17 not have testified.

11:17:47 18 The Government must prove a defendant's
11:17:49 19 guilt beyond a reasonable doubt. I will tell you more
11:17:53 20 about this in my closing instructions. But bear in mind
11:17:58 21 that in this respect, in a criminal case, the burden is
11:18:00 22 higher than it would be in a civil case.

11:18:06 23 The defendant is charged with making a false
11:18:08 24 statement with regard to the purchase a firearm. You
11:18:14 25 will get more detailed instructions at the end of the

11:18:17 1 case. You as jurors must decide the case solely on the
11:18:24 2 evidence presented within the courtroom. This means
11:18:27 3 that during the trial, you may not conduct any
11:18:29 4 independent research about the case. You should not
11:18:36 5 consult any references or other materials or electronic
11:18:42 6 tools having to do with the information.

11:18:46 7 Until you retire to deliberate to discuss
11:18:50 8 the case, you should not discuss it with anyone, even
11:18:53 9 with your fellow jurors.

11:19:00 10 If you want to take notes, you can. If you
11:19:02 11 do, they're for your own use and not to be shared with
11:19:05 12 anyone else.

11:19:13 13 The trial will begin in a few moments.
11:19:16 14 First the Government will make an opening statement,
11:19:18 15 which is an outline to help you understand the evidence
11:19:21 16 as it's received. The defense may then make an opening
11:19:25 17 statement. They don't have to make one, but they can.
11:19:28 18 These opening statements are neither evidence nor
11:19:31 19 argument. The Government will then present its
11:19:33 20 witnesses, and the lawyer for the defendant may
11:19:37 21 cross-examine them. Following the Government's case,
11:19:39 22 the defendant may, if he wishes, present witnesses whom
11:19:43 23 the Government may, in turn, cross-examine.

11:19:46 24 After all of the evidence has been received,
11:19:48 25 the attorneys will make their closing arguments to

11:19:52 1 summarize and interpret the evidence for you and I will
11:19:55 2 give you instructions on the law. After that, you will
11:19:59 3 retire to deliberate on your verdict.

11:20:01 4 That's an outline of how the jury -- the
11:20:04 5 trial should take place. And I think if you follow
11:20:07 6 along, you'll see it will follow that course.

11:20:10 7 At this point, the Government can have the
11:20:12 8 jury for opening statement.

11:20:15 9 MR. KELLY: Thank you, Your Honor.

11:20:22 10 Ladies and gentlemen, we're not going to
11:20:24 11 complicate this for you. The evidence will show, on
11:20:28 12 August 7th, 2023, the defendant, Mr. Steven Nicholas
11:20:32 13 Fulton, walked into a store called Carolina Caliber.
11:20:37 14 Now, Carolina Caliber is a federal firearm licensee
11:20:41 15 which is permitted to sell firearms. It's sometimes
11:20:44 16 known as an FFL. These institutions are commonly
11:20:47 17 referred to as "gun shops" or "gun stores."

11:20:49 18 Now, when you walk into one of these gun
11:20:52 19 shops or one of these gun stores, you have to fill out a
11:20:55 20 form that's called a Firearm Transaction Record. It's
11:21:00 21 also called ATF 4473 form. And you're going to hear
11:21:03 22 that term a lot throughout this trial.

11:21:06 23 And when you fill out that form, you must be
11:21:09 24 truthful in filling it out. Because if you're not, you
11:21:12 25 are, in fact, committing a crime. There's one question

31a

11:21:15 1 specifically that's asked, is: Have you been convicted
11:21:18 2 of a felony? Again, ladies and gentlemen, you must be
11:21:21 3 truthful on that form.

11:21:23 4 Now, you're going to hear testimony from
11:21:26 5 Senior Investigator David Jones who is going to talk to
11:21:29 6 you about why this form is important, why it's used, and
11:21:34 7 its overall purpose. You will also hear from ATF
11:21:39 8 Special Agent Daryl Cato. Special Agent Cato will tell
11:21:43 9 you how he learned that the defendant in this matter had
11:21:46 10 gone to multiple gun shops, filling out this form,
11:21:51 11 checking that he had not been convicted of a felony.
11:21:54 12 And upon getting this information, Agent Cato calls the
11:22:01 13 defendant and tells him, "You're not permitted to
11:22:03 14 possess a firearm. You can't own one because of a
11:22:07 15 felony conviction in 2006."

11:22:11 16 Not so -- not so soon afterwards, the
11:22:14 17 defendant goes into another gun shop, fills out this
11:22:17 18 form, again checking that he is not a felon. You're
11:22:24 19 going to hear Agent Cato tell you that he went to the
11:22:27 20 defendant's home, spoke with him eye to eye,
11:22:31 21 communicating, "You cannot possess a firearm. Stop
11:22:37 22 doing it or you will be prosecuted."

11:22:41 23 However, ladies and gentlemen, almost three
11:22:44 24 weeks later, you'll hear the testimony from Ms. Deborah
11:22:48 25 Hines how the defendant walked into Carolina Caliber,

11:22:53 1 picked out the gun he was going to purchase, filled out
11:22:56 2 that form in front of her. She watched him sign the
11:23:00 3 form. And he also, again, checked "no" to have you been
11:23:04 4 convicted of a felony.

11:23:07 5 She will tell you how part of her job
11:23:09 6 description is that she has to send this up to a system
11:23:12 7 for a background check. And the background check was
11:23:15 8 immediately denied. It didn't come back favorably.

11:23:19 9 Well, ladies and gentlemen, the reason it
11:23:20 10 didn't come back favorably, the evidence is going to
11:23:23 11 show because he was convicted of a felony.

11:23:27 12 Ladies and gentlemen, the Government intends
11:23:28 13 to show you through the evidence that Mr. Fulton knew
11:23:33 14 that he was a convicted felon prior to walking into that
11:23:37 15 store on August 7th, 2023, not just because of the
11:23:41 16 conviction itself but because Agent Cato told him not
11:23:46 17 once, but twice. When he walked into that store on
11:23:48 18 August 7th, 2023, he did so knowing that. He checked
11:23:54 19 "no" after being advised by the agent that he was, in
11:24:00 20 fact, a convicted felon. And he did so intending to
11:24:04 21 deceive the store in order to purchase that firearm.

11:24:08 22 And ladies and gentlemen, after you hear all
11:24:10 23 of the evidence, my colleague, he's going to come back
11:24:14 24 before you and we're going to walk through it again and
11:24:17 25 we're going to ask that you find the defendant guilty

11:24:21 1 beyond a reasonable doubt. Thank you.

11:24:24 2 THE COURT: Do you want to make an opening
11:24:25 3 statement?

11:24:26 4 MS. COSTELLO: Yes, Your Honor.

11:24:30 5 Good morning. When I was eight years old,
11:24:34 6 my grandmother took me to a toy store. She said for
11:24:37 7 your birthday, you can have anything you want in this
11:24:39 8 store as long as it's not over \$15. It was a pretty
11:24:44 9 cool toy store. It had a bunch of neat stuff in it.
11:24:47 10 Barbie dolls, anything an eight-year-old girl would
11:24:49 11 want. But this toy store, it was special. It was known
11:24:52 12 for this one particular thing. It had a frog. A
11:24:55 13 mail-order frog. You could mail away, you could buy a
11:24:57 14 frog, 16.95. You bought a little ticket. You sent it
11:25:01 15 away in the mail and they sent you a real, live tadpole.
11:25:04 16 As an eight-year-old child who loved animals, I thought
11:25:07 17 this was the coolest thing ever.

11:25:08 18 So I took the ticket to my grandmother and I
11:25:11 19 said, "This is what I want." Thinking she wouldn't
11:25:14 20 notice that it was 16.95. And she, of course, being a
11:25:18 21 wise woman who had raised four children, said, "No. I
11:25:22 22 said \$15."

11:25:24 23 And I was obviously disappointed. "Please.
11:25:27 24 It's my birthday. It's only a 1.95 more."

11:25:31 25 She held firm. She held fast. "Nope. Go

11:25:35 1 back. Pick something else."

11:25:37 2 Now, you can see the lesson my grandmother
11:25:40 3 was trying to teach me, that you need to -- that
11:25:42 4 boundaries are meant to be enforced. That when a limit
11:25:46 5 is set, she's going to hold to that limit and so must I.

11:25:49 6 I tell you this because something similar is
11:25:52 7 going to happen with you and the Government today in
11:25:55 8 Mr. Fulton's case. The prosecutor, at the end of this
11:25:58 9 case, is going to come up to you and he's going to ask
11:26:00 10 you to return a verdict of guilty. And just as my
11:26:03 11 grandmother held fast to her boundary, held me to a
11:26:07 12 limit, it's your job, ladies and gentlemen of the jury,
11:26:10 13 to hold the Government to its limit, and that limit is
11:26:12 14 the burden of proof.

11:26:14 15 The Government must prove that Mr. Fulton is
11:26:17 16 guilty by proof beyond a reasonable doubt. It is a
11:26:21 17 heavy burden. It is the heaviest burden in the legal
11:26:26 18 system. It is important that the Government does this.
11:26:29 19 It is set in place, this burden, to protect liberty.
11:26:33 20 And it is your job to hold them to it. Mr. Fulton does
11:26:37 21 not have to prove anything. The burden lies squarely on
11:26:40 22 the shoulders of the Government. And they basically --
11:26:42 23 the judge will instruct you as to this: They basically
11:26:45 24 have to prove four things. The judge will give you many
11:26:48 25 more instructions on this later, but they're essentially

11:26:50 1 that Mr. Fulton made a statement, the statement was
11:26:53 2 false, Mr. Fulton knew the statement was false, and the
11:26:57 3 statement was intended or likely to deceive the firearms
11:27:00 4 dealer.

11:27:03 5 The Government has to prove each one of
11:27:07 6 those elements beyond a reasonable doubt. And it's your
11:27:12 7 job, just as my grandmother held me to that limit, that
11:27:16 8 you hold them to that burden. And after you've heard
11:27:20 9 all of the evidence, you will realize that the
11:27:23 10 Government can't prove it, that they cannot meet their
11:27:28 11 burden, that there are holes in their case. And my
11:27:31 12 colleague, Katherine Shea, will come back up here and
11:27:33 13 she will tell you what those holes are. She will tell
11:27:37 14 you that there are at least five reasons that the
11:27:41 15 Government hasn't proven this case. There are probably
11:27:45 16 more, because he's an innocent man, but there are five.
11:27:48 17 And she will ask you to return a verdict of not guilty.
11:27:50 18 Thank you.

11:27:51 19 THE COURT: Okay. Call your first witness.

11:27:53 20 MR. CHAMPAIGN: Your Honor, prior to calling
11:27:54 21 my first witness, I would move to admit certain
11:27:58 22 exhibits -- self-authenticating exhibits pursuant to
11:28:01 23 Rule 902 (11) of the Rules of Evidence. May I move
11:28:04 24 those exhibits in?

11:28:05 25 THE COURT: Okay.

11:28:06 1 MR. CHAMPAIGN: Those will be Exhibit 1,
11:28:10 2 Exhibit 3, and then Exhibits 5 through 18, Your Honor.

11:28:17 3 THE COURT: They're received.

11:28:18 4 MR. CHAMPAIGN: Thank you, Your Honor.

11:28:19 5 (Government's Exhibits 1, 3, 5 through 18
11:28:20 6 are received.)

11:28:20 7 MR. CHAMPAIGN: The Government will call our
11:28:21 8 first witness, David Jones.

11:28:39 9 Your Honor, may I remain seated during
11:28:41 10 questioning?

11:28:42 11 THE COURT: Yeah.

11:28:43 12 MR. CHAMPAIGN: Thank you.

11:28:43 13 **DAVID JONES,**

11:29:12 14 was first duly sworn and testified as follows:

11:29:12 15 MR. CHAMPAIGN: May I proceed, Your Honor?

11:29:13 16 THE COURT: Yeah.

11:29:13 17 **DIRECT EXAMINATION BY MR. CHAMPAIGN:**

11:29:14 18 Q. Good morning.

11:29:15 19 A. Good morning, sir.

11:29:15 20 Q. Can you state your name for the record.

11:29:17 21 A. David Jones.

11:29:17 22 Q. Can you spell it out?

11:29:19 23 A. D-A-V-I-D; Jones, J-O-N-E-S.

11:29:25 24 Q. Mr. Jones, where do you work?

11:29:27 25 A. I am an industry operations investigator with the

11:29:32 1 Bureau of Alcohol, Tobacco, Firearms and Explosives.

11:29:35 2 Q. How long have you worked there?

11:29:36 3 A. I've been with ATF since 2010.

11:29:39 4 Q. And what exactly are the duties of an industry
11:29:42 5 operations investigator?

11:29:44 6 A. The industry operations investigators are the --
11:29:48 7 we're part of the regulatory arm of ATF. We are the
11:29:53 8 persons that interact regularly with the firearms and
11:29:57 9 explosives industry. Those industry members would be
11:30:01 10 those that obtain a federal firearms license or a
11:30:03 11 federal explosives license or permit to operate in the
11:30:10 12 firearms or explosives industry.

11:30:12 13 Q. So you're familiar with a Firearm Transaction
11:30:14 14 Record, also known as an ATF Form 4473?

11:30:17 15 A. Yes, sir. Very.

11:30:20 16 MR. CHAMPAIGN: Your Honor, may I approach?

11:30:20 17 THE COURT: Yes.

11:30:29 18 (Document handed to the witness.)

11:30:37 19 Q. Officer Jones, I just handed you what had been
11:30:41 20 previously marked and admitted as Exhibit 1. Do you
11:30:43 21 recognize that document?

11:30:44 22 A. Yes, sir. It is ATF Form 4473.

11:30:48 23 Q. Can you explain to the jury what an ATF Form 4473
11:30:51 24 is?

11:30:52 25 A. The 4473 form is the gun form that if an

11:31:00 1 individual wants to go purchase a firearm from a gun
11:31:02 2 dealer or a federal firearms licensee, the 4473 form is
11:31:07 3 one of the required records that ATF says a federal
11:31:11 4 firearms dealer has to complete. This 4473 form is
11:31:17 5 completed jointly by both the licensee and then also the
11:31:22 6 purchaser of the firearm.

11:31:23 7 MR. CHAMPAIGN: Your Honor, can I publish
11:31:25 8 Exhibit 1 to the jury?

11:31:27 9 THE COURT: All right.

11:31:27 10 Q. Now, is there a particular way this form should
11:31:30 11 be filled out?

11:31:31 12 A. Yes, sir. The form itself, it's dictated to the
11:31:37 13 licensee that the form has to be completed in order.
11:31:41 14 Meaning that you start at the top of the first page,
11:31:44 15 Section A. And there are sections of the form, and
11:31:49 16 Section A, for example, is completed initially by the
11:31:52 17 licensee, by the gun dealer or employee themselves. And
11:31:56 18 that identifies the firearm that the customer said, "I
11:31:59 19 want to purchase this gun."

11:32:01 20 Section B is actually completed exclusively by
11:32:05 21 the customer. We instruct licensees, you're to put no
11:32:12 22 ink in Section B. That is for the customer to complete
11:32:17 23 only.

11:32:18 24 Eventually, you get to Section C. Goes back to
11:32:20 25 the licensee again. Section C is where -- where it's

11:32:26 1 documented, essentially, driver's license or
11:32:28 2 identification information and also the background check
11:32:32 3 information is recorded on the form.

11:32:35 4 In Section D, if that section is necessary -- if,
11:32:41 5 for example, the background check was delayed, Section D
11:32:44 6 is an area for the customer, again, to document. And he
11:32:49 7 just says -- he or she says nothing has happened that
11:32:53 8 should have changed any of my answers in those
11:32:57 9 prohibiting questions in Section B.

11:32:59 10 And then last but not least, in Section E, the
11:33:04 11 licensee does it again -- or gets their turn on the form
11:33:08 12 again. And it also identifies who that individual was
11:33:11 13 that interacted with the customer.

11:33:16 14 Q. Okay. Well, let's start with Section E since
11:33:18 15 we're already there.

11:33:19 16 A. Yes, sir.

11:33:20 17 Q. Question 33, it says corporate name and address
11:33:23 18 of transferor or seller, and then it lists an address
11:33:28 19 and a name. Is that for the business that is selling
11:33:31 20 the firearm?

11:33:31 21 A. Correct. Yes. That is the licensee information.

11:33:37 22 Q. And on question 34, where it says
11:33:40 23 transferor/seller's name, would that be the name of the
11:33:42 24 employee that was working with the customer at the time?

11:33:44 25 A. Yes, sir. The licensees are instructed to have

11:33:49 1 your employee have whoever it is that interacted with
11:33:52 2 that customer to document there in item number 34.

11:33:57 3 Q. Okay. Let's jump back to Section B. I believe
11:34:03 4 you said it's the prohibited question section.
11:34:07 5 Outside -- and we'll go to question 21. Outside of
11:34:12 6 letter (a), if anyone went to answer subsections (b)
11:34:17 7 through (m) and stated "yes," would they be able to
11:34:22 8 purchase a firearm?

11:34:23 9 A. No, sir, they would not. Those are -- those
11:34:26 10 questions are known as prohibiting questions by us. And
11:34:32 11 the customer would not be able to purchase a firearm,
11:34:34 12 and licensees are also instructed not to even bother
11:34:38 13 conducting a NICS background check because the customer
11:34:43 14 has already stated to them they are prohibited.

11:34:46 15 Q. What's the danger if inaccurate information is
11:34:49 16 placed on this form?

11:34:51 17 A. If the customer placed inaccurate information on
11:34:55 18 there, it could potentially negatively impact the
11:34:59 19 background check process. So it could -- the background
11:35:04 20 check process would be potentially impacted because a
11:35:08 21 prohibited person may potentially get their hands on a
11:35:14 22 firearm, if, in fact, they were prohibited. That would
11:35:18 23 be the potential if a customer put incorrect information
11:35:23 24 in Section B.

11:35:26 25 MR. CHAMPAIGN: No further questions, Your

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11:35:27 1 Honor. Offer for cross.

11:35:28 2 THE COURT: Any questions?

11:35:29 3 MS. SHEA: Yes, Your Honor.

11:35:33 4 CROSS-EXAMINATION BY MS. SHEA:

11:35:33 5 Q. Good morning.

11:35:34 6 A. Good morning, ma'am.

11:35:35 7 Q. Prior to today, did you review the entirety of
11:35:39 8 the evidence in this case to prepare for your testimony?

11:35:42 9 A. The entirety, no, ma'am. I am familiar with the
11:35:45 10 4473 form, and that was my preparation.

11:35:49 11 Q. Okay. Did you actually find or -- find any
11:35:54 12 evidence in your review of this case that Mr. Fulton
11:35:57 13 ever actually purchased a firearm in 2023?

11:36:01 14 A. I didn't go looking for that. My job, my task
11:36:06 15 was to discuss the 4473 form. That is my expertise.

11:36:11 16 Q. I understand.

11:36:12 17 As an ATF agent, are you aware that there are
11:36:16 18 many people who purchase firearms at gun shows without
11:36:20 19 having to undergo a background check?

11:36:22 20 A. Yes, ma'am, I am.

11:36:22 21 Q. You reviewed no evidence that Mr. Fulton ever
11:36:25 22 went to a gun show; right?

11:36:26 23 A. I have not looked. I'm sorry.

11:36:28 24 Q. As an ATF agent, you're aware there are a number
11:36:32 25 of individuals in eastern North Carolina that purchase

11:36:35 1 firearms on the black market, just on the street; right?

11:36:38 2 A. I am. Yes, ma'am.

11:36:39 3 MR. CHAMPAIGN: Objection, Your Honor.

11:36:40 4 THE COURT: Overruled.

11:36:42 5 Q. And you reviewed no evidence that Mr. Fulton ever
11:36:45 6 purchased a firearm on the street; right?

11:36:46 7 A. I did not look. That was not my task.

11:36:48 8 Q. I want to discuss briefly the background check
11:36:51 9 process that you were talking about during your direct
11:36:54 10 testimony. So after someone fills out the form and it's
11:37:00 11 submitted by the -- by the store, the answer on the
11:37:04 12 screen is virtually instantaneous as to whether they
11:37:07 13 pass or fail; right?

11:37:09 14 A. That is incorrect. There are multiple
11:37:14 15 possibilities. So one possible response from NICS --
11:37:18 16 and NICS is operated by the FBI. But one possible
11:37:22 17 response is "proceed." Another possible response would
11:37:25 18 be "delayed." Another would be "denied." The fourth
11:37:29 19 possible response -- and that's really unlikely and I've
11:37:33 20 never seen a scenario where it's happened. But you can
11:37:35 21 see on the form there's a box for "canceled." But those
11:37:39 22 are the four possible responses.

11:37:42 23 A delayed response -- some response is given
11:37:45 24 immediately. But as far as a proceed or a denied, that
11:37:47 25 is not necessarily an immediate answer.

11:37:51 1 Q. Okay. But the screen does show up and it tells
11:37:55 2 the sales representative proceed, deny, or delay
11:38:00 3 typically; right?

11:38:00 4 A. Yes, ma'am.

11:38:04 5 Q. And if the screen says "deny" --

11:38:09 6 A. Okay.

11:38:10 7 Q. -- the sales representative is not informed which
11:38:14 8 question caused the customer to fail the background
11:38:17 9 check; correct?

11:38:18 10 A. You're exactly right. NICS does not communicate
11:38:21 11 because it's not that employee's business to know why I
11:38:24 12 may be prohibited if I was denied.

11:38:26 13 Q. Exactly.

11:38:27 14 A. NICS doesn't communicate that.

11:38:29 15 Q. Exactly. So it just says "deny," the word?

11:38:32 16 A. Correct. Yes, ma'am.

11:38:33 17 Q. And then typically what would happen next is that
11:38:37 18 the sales representative would inform the customer that
11:38:40 19 it was denied and they wouldn't be able to go through
11:38:43 20 with the transaction?

11:38:44 21 A. Correct. Yes, ma'am.

11:38:46 22 Q. Now, it's possible sometimes for a customer to
11:38:51 23 try to remedy a denial; right?

11:38:53 24 A. Absolutely. Yes, ma'am.

11:38:55 25 Q. And some stores actually provide information to

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11:38:58 1 the customers who receive a deny screen about how to get
11:39:02 2 in touch with the ATF to try to straighten out why their
11:39:05 3 background check was denied; right? Some stores do
11:39:08 4 that?

11:39:08 5 A. Not exactly. That document that I think you're
11:39:12 6 referencing, that's actually produced by the FBI, and
11:39:15 7 that is how customers can contact the FBI and go through
11:39:20 8 the -- they have what's known as a "voluntary appeal
11:39:23 9 file" and where they can request information identifying
11:39:28 10 why they may be prohibited and to try to appeal whatever
11:39:33 11 that determination was.

11:39:35 12 Q. Right. I'm sorry. I misspoke. So it's an FBI.

11:39:38 13 And not every store does that, but some stores
11:39:41 14 do; right?

11:39:42 15 A. That information is provided to every federal
11:39:45 16 firearms licensee. I cannot say whether they do or do
11:39:48 17 not provide it --

11:39:49 18 Q. Sure.

11:39:50 19 A. -- all times.

11:39:51 20 Q. And sometimes, in fact, a denial of the
11:39:55 21 background check could be an error; right?

11:39:57 22 A. It is absolutely possible. Yes, ma'am.

11:40:01 23 Q. Sometimes the database has erroneous information;
11:40:05 24 right?

11:40:05 25 A. Correct. Yes, ma'am.

11:40:07 1 Q. For example, two people might have the common
11:40:09 2 name, like John Smith, and a criminal conviction might
11:40:13 3 be attached to the wrong person; right?

11:40:14 4 A. Yes, ma'am. I'm familiar with common names.

11:40:18 5 Q. Yes, you are.

11:40:21 6 After someone fails a background check, it is not
11:40:24 7 illegal in and of itself to go back to a gun store to
11:40:28 8 fill out another background check; right?

11:40:31 9 A. I am not aware.

11:40:34 10 MS. SHEA: That's it, Your Honor.

11:40:36 11 THE COURT: Do you have anything else?

11:40:38 12 MR. CHAMPAIGN: Nothing further, Your Honor.

11:40:39 13 THE COURT: All right. Thank you, sir.

11:40:40 14 THE WITNESS: Yes, sir.

11:40:42 15 THE COURT: Call your next witness.

11:40:43 16 MR. KELLY: Your Honor, at this time the
11:40:44 17 Government would call Ms. Deborah Hines to the stand.

11:40:44 18 **DEBORAH HINES,**

11:41:40 19 was first duly sworn and testified as follows:

11:41:40 20 DIRECT EXAMINATION BY MR. KELLY:

11:41:41 21 Q. Ms. Hines, can you please introduce yourself to
11:41:43 22 the Court and the jury.

11:41:44 23 A. Yes. My name is Deborah Hines. I work at
11:41:48 24 Carolina Caliber gun shop in Greenville -- Winterville,
11:41:51 25 North Carolina.

11:41:51 1 Q. And could you spell your name, please.

11:41:53 2 A. D-E-B-O-R-A-H.

11:41:57 3 Q. And your last name?

11:41:58 4 A. Hines, H-I-N-E-S.

11:42:01 5 Q. Now, you just mentioned that you work at the
11:42:03 6 Carolina Caliber in Winterville, North Carolina. Can
11:42:06 7 you tell the jury, what are your current job title and
11:42:10 8 responsibilities?

11:42:10 9 A. I am a cashier there, check people out. Also,
11:42:15 10 when people want to purchase guns, they'll go out on the
11:42:18 11 sales floor and the salesman out there will, you know,
11:42:22 12 show them the guns and everything, and then they bring
11:42:25 13 the gun up to me. For the most part, I'm the one that
11:42:28 14 does all of the processing and helps them fill out their
11:42:34 15 4473 form and, you know, run the background checks.

11:42:38 16 Q. Could you tell the jury, how is this -- the ATF
11:42:43 17 4473 form filled out in your store?

11:42:46 18 A. We have our 4473 form integrated with the FBI.
11:42:53 19 It's on a computer. It's like a touchscreen. And they
11:42:58 20 have to go up there -- I'll help them get started, and
11:43:02 21 then they will go up there and type in all of the
11:43:05 22 information and press the, you know, buttons on there as
11:43:09 23 well.

11:43:10 24 Q. And just for clarification, you don't fill the
11:43:12 25 form out for them, do you?

11:43:14 1 A. No. I cannot do that.

11:43:15 2 Q. Is it mandatory that a person has to complete
11:43:18 3 this form before they can purchase a firearm from your
11:43:20 4 store?

11:43:20 5 A. That is correct.

11:43:22 6 Q. And you regularly work with this 4473 form?

11:43:25 7 A. Yes, I do.

11:43:27 8 Q. Could you tell the jury, from start to finish,
11:43:32 9 how long does the process normally take?

11:43:34 10 A. On our system, it doesn't take long at all. As
11:43:37 11 long as you have someone that can use a touchscreen or a
11:43:42 12 mouse or just type. You know, if they have problems
11:43:46 13 getting through it, I'll help -- show them how to move
11:43:48 14 the cursor around and all of that. But it's not a long
11:43:53 15 process. Probably about ten minutes, at the most.

11:43:57 16 Q. If questions arise while they're filling out the
11:43:59 17 form, do they speak with you about that, to answer those
11:44:02 18 questions?

11:44:02 19 A. Yes. I always let them know if they have any
11:44:05 20 questions, they can ask me. I can't answer, but I can
11:44:09 21 help them understand the question.

11:44:11 22 Q. And generally before they -- before the form is
11:44:14 23 submitted, do they have to sign the form in front of
11:44:16 24 you?

11:44:17 25 A. Yes -- well, actually, I mean, they -- as long as

11:44:21 1 we have a signature up there, it's good. Most of the
11:44:24 2 time I come over and show them where to sign, if they
11:44:28 3 don't have -- if they don't know. Some people will go
11:44:32 4 ahead and sign it.

11:44:34 5 Q. Thank you.

11:44:35 6 Now, shifting to August 7th, 2023. Were you
11:44:38 7 working at Carolina Caliber that day?

11:44:40 8 A. Yes, I was.

11:44:41 9 Q. And at any time during the day, did you happen to
11:44:44 10 work with an individual by the name of Steven Nicholas
11:44:47 11 Fulton?

11:44:50 12 A. Yes, he did come in. They did bring a gun over
11:44:53 13 for me to process for him.

11:44:55 14 Q. All right. Do you see him sitting in the
11:44:56 15 courtroom today?

11:44:57 16 A. Yes. He's the gentleman over there with the
11:45:00 17 black shirt on.

11:45:02 18 THE COURT: The witness has identified the
11:45:04 19 defendant.

11:45:04 20 MR. KELLY: Thank you, Your Honor.

11:45:08 21 Q. Can you tell -- well, let me ask this: Did you
11:45:12 22 assist Mr. Fulton the way that you previously described
11:45:14 23 what your role in the process is of purchasing the
11:45:16 24 firearm?

11:45:16 25 A. Yes.

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11:45:17 1 Q. So you went over the ATF 4473 form with him?

11:45:21 2 A. Yes. I show him how to go through it. I bring
11:45:25 3 up the screen and show him where, you know, he has to --
11:45:28 4 well, it automatically comes up. They know where to
11:45:31 5 type, and I show them how to maneuver through it. And
11:45:36 6 then I let them know if they have any questions,
11:45:38 7 anything they don't understand, they can ask me. I'll
11:45:42 8 help them understand it, but I can't answer it for them.

11:45:44 9 Q. Okay. When he filled out that form and you
11:45:48 10 reviewed it, did he check that he -- did he check the
11:45:50 11 box that stated -- that asked if he had ever been
11:45:54 12 convicted of a felony?

11:45:55 13 A. It had to be or I wouldn't have been able to even
11:45:58 14 process a background check. It's automatically --
11:46:04 15 automatically deny at that point.

11:46:05 16 Q. So if you can explain that a little bit. If
11:46:07 17 someone checks that box that they had been convicted of
11:46:09 18 a felony, what would you do in that situation?

11:46:11 19 A. Once I go around to the other side, at that point
11:46:14 20 I tell them we can't sell them the gun.

11:46:18 21 Q. Did you see him sign the form?

11:46:21 22 A. I don't recall whether I actually saw him sign
11:46:25 23 it. I believe I did because I usually help them at that
11:46:29 24 point, you know, to -- we usually go back and make sure
11:46:32 25 they didn't make any typos in their name or address when

11:46:36 1 they were typing. And at that point I show them how to
11:46:41 2 finish it out. So I'll show them how to sign -- not
11:46:44 3 show them how to sign it, but show them where to sign
11:46:46 4 it.

11:46:47 5 Q. And after they -- after they sign the form -- or
11:46:49 6 after he signed the form, did it come to you?

11:46:52 7 A. Yes. It then goes over to the back side where I
11:46:59 8 go around to the other side. There's another set of
11:47:01 9 computers over there, and I process the second part.

11:47:05 10 Q. Do you have to sign the form also?

11:47:07 11 A. Yes, I do.

11:47:09 12 Q. And did you -- I'm sorry. Go ahead.

11:47:11 13 A. Yes, go ahead.

11:47:13 14 Q. Did you submit the form through the NICS system
11:47:18 15 for his background check?

11:47:19 16 A. Yes, I did.

11:47:20 17 Q. And what was the result of that background check?

11:47:22 18 A. It come back an automatic deny.

11:47:27 19 Q. With it coming back the automatic denial, did you
11:47:29 20 let him know that was the case?

11:47:32 21 A. Yes, I did. I come -- I went back around and
11:47:36 22 told him I was not able to sell him the gun, that it did
11:47:39 23 come back deny. We do not know the reason. They don't
11:47:44 24 tell us that when we get a deny. We do give them a
11:47:48 25 little card with the transaction number with a website

11:47:52 1 that they can go to, to inquire about why they were
11:47:56 2 denied.

11:47:57 3 Q. Ms. Hines, is there a surveillance camera that is
11:48:02 4 capturing your day-to-day sales in the store?

11:48:04 5 A. Yes, there is.

11:48:07 6 MR. KELLY: Your Honor, may I approach the
11:48:08 7 witness?

11:48:08 8 THE COURT: Yes.

11:48:33 9 (Counsel confer.)

11:48:33 10 MR. KELLY: May we have one moment, Your
11:48:35 11 Honor?

11:48:35 12 THE COURT: Yes.

11:48:36 13 (Counsel confer.)

11:49:06 14 MS. SHEA: Your Honor, I objected to this
11:49:08 15 video clip that they're trying to enter. There's a
11:49:11 16 still picture that I don't object to, but the video is
11:49:14 17 like a video of a video. It's -- I object to the video
11:49:20 18 of a video coming in.

11:49:22 19 MR. CHAMPAIGN: Your Honor, in the video is
11:49:23 20 the witness with the defendant. She can authenticate
11:49:26 21 what's going on in the video as she is the actual person
11:49:29 22 in the video.

11:49:33 23 THE COURT: I'm sorry. What's your point?

11:49:36 24 MR. CHAMPAIGN: She can -- I think their
11:49:38 25 issue is they're saying that there's an authenticity

11:49:40 1 issue with the video; I'm saying that there's not. She
11:49:42 2 can authenticate what's in that video based on the fact
11:49:45 3 that she's in -- the individual that's actually in the
11:49:47 4 video. She has firsthand knowledge what was happening.

11:49:50 5 THE COURT: Okay. All right. Overruled.

11:49:54 6 (Government's Exhibits 2 and 2A are marked.)

11:50:01 7 Q. Ms. Hines, I am showing you what's been marked as
11:50:05 8 Government Exhibits 2 and 2A. Do you recognize those
11:50:12 9 disks?

11:50:12 10 A. Yes, I do.

11:50:13 11 Q. Could you tell the jury what they are?

11:50:17 12 A. These are a disk of what I've watched earlier, is
11:50:23 13 what we have showing where Mr. Fulton was in the
11:50:29 14 building trying to purchase a gun.

11:50:31 15 Q. And how do you know that's what that -- what that
11:50:34 16 disk shows?

11:50:34 17 A. Because I did look at it and I signed it.

11:50:37 18 Q. And is that video a fair and accurate depiction
11:50:40 19 of your interaction with Mr. Fulton on that day?

11:50:43 20 A. Yes, sir.

11:50:44 21 Q. And would it help you with your testimony today?

11:50:47 22 A. As far as -- yes, I mean, that's showing that he
11:50:51 23 was there. Yeah.

11:50:54 24 MR. KELLY: Your Honor, at this time the
11:50:55 25 Government would like to -- would submit to move

11:50:57 1 Government's Exhibit 2 and 2A into evidence.

11:50:59 2 THE COURT: It will be received.

11:51:01 3 (Government's Exhibits 2 and 2A are
11:51:02 4 received.)

11:51:02 5 MR. KELLY: And Your Honor, may the
11:51:03 6 Government present -- publish Government Exhibit 2A to
11:51:06 7 the jury?

11:51:07 8 THE COURT: Go ahead.

11:51:15 9 (Video played.)

11:51:31 10 Q. Ms. Hines, in watching this video, can you tell
11:51:34 11 the jury what exactly is going on at this point in time?

11:51:38 12 A. This is where I had just finished running the
11:51:41 13 background check and it come back as a deny, and I wrote
11:51:45 14 the transaction number for that denial down on a card
11:51:48 15 and was explaining to him the website that he can go to,
11:51:51 16 to see why it was denied.

11:51:57 17 Q. Ms. Hines, was this the last time that you saw
11:51:59 18 Mr. Fulton?

11:52:01 19 MS. COSTELLO: Objection. I mean, it is
11:52:05 20 irrelevant what happens after this. This is the
11:52:08 21 incident that the Government is charging.

11:52:10 22 THE COURT: Why are you offering this?

11:52:10 23 MR. KELLY: Your Honor, the purpose of the
11:52:12 24 testimony is, again, towards knowledge portion. The
11:52:16 25 intent -- I'm sorry -- in regards to trying to purchase

11:52:19 1 the firearm.

11:52:20 2 THE COURT: All right.

11:52:20 3 MS. COSTELLO: Your Honor, anything that
11:52:21 4 happened after this is irrelevant to his intent to this
11:52:23 5 moment.

11:52:26 6 THE COURT: Sustained.

11:52:28 7 MR. KELLY: One moment, Your Honor.

11:52:49 8 (Pause.)

11:52:49 9 MR. KELLY: No further questions at this
11:52:50 10 time, Your Honor.

11:52:51 11 THE COURT: Any cross?

11:52:52 12 MS. COSTELLO: No questions.

11:52:53 13 THE COURT: All right. Thank you, ma'am.
11:52:56 14 Call your next witness.

11:52:59 15 MR. CHAMPAIGN: Yes, Your Honor. The
11:53:02 16 Government calls Daryl Cato to the stand.

11:53:02 17 **DARYL CATO,**

11:53:28 18 was first duly sworn and testified as follows:

11:53:28 19 MR. CHAMPAIGN: May I proceed, Your Honor?

11:53:29 20 THE COURT: Yeah.

11:53:30 21 **DIRECT EXAMINATION BY MR. CHAMPAIGN:**

11:53:31 22 Q. Good morning.

11:53:31 23 A. Good morning.

11:53:32 24 Q. Can you state your name and spell it for the
11:53:34 25 record.

11:53:34 1 A. Daryl Cato. D-A-R-Y-L, C-A-T-O.

11:53:38 2 Q. Mr. Cato, can you tell the jury where you work.

11:53:42 3 A. I'm a task force officer with the Bureau of
11:53:45 4 Alcohol, Tobacco, Firearms and Explosives, and I'm also
11:53:48 5 a corporal with the Goldsboro Police Department.

11:53:50 6 Q. Make sure you speak into the mike.

11:53:52 7 How long have you been working there?

11:53:54 8 A. I've been with ATF for five years and with
11:53:57 9 Goldsboro P.D. for eleven.

11:53:59 10 Q. Is that your only law enforcement experience?

11:54:02 11 A. No, sir. I had previously worked at Lenoir
11:54:05 12 County Sheriff's Office for eight years.

11:54:09 13 Q. And in terms of your current duties, were you
11:54:14 14 given the opportunity or assigned a case to an
11:54:16 15 investigation into Steven Nicholas Fulton?

11:54:18 16 A. Yes, sir.

11:54:19 17 Q. And how did you get that investigation file?

11:54:23 18 A. I was assigned a case through my supervisor with
11:54:25 19 ATF out of Wilmington, North Carolina, Chad Nesbit, and
11:54:29 20 it was an attempt-to-purchase-a-firearm case.

11:54:34 21 Q. And when you received that case, what did you do?

11:54:38 22 A. I looked at the documents that were provided to
11:54:40 23 me, and one was an ATF Form 4473 and the second was a
11:54:47 24 criminal history check.

11:54:50 25 Q. Do you know when you received that investigation

11:54:53 1 file?

11:54:53 2 A. The first case was June 22nd of 2023.

11:54:58 3 Q. And what date did that purchase occur that you
11:55:02 4 were investigating?

11:55:02 5 A. On the 21st of June, 2023.

11:55:09 6 Q. So what did you do upon receiving this
11:55:12 7 information?

11:55:14 8 A. On the 23rd of June, I was able to speak to
11:55:18 9 Mr. Fulton on the telephone, and I advised him who I was
11:55:23 10 and the reason why I was calling him, because he was
11:55:25 11 attempting to purchase a firearm being a prohibited
11:55:28 12 person.

11:55:30 13 Q. And did the defendant say anything to you?

11:55:33 14 MS. SHEA: Objection, Your Honor. We have
11:55:34 15 received no documentation of anything that Mr. Fulton
11:55:37 16 said in this phone call, and so any testimony is clearly
11:55:40 17 prohibited under Rule 16.

11:55:42 18 THE COURT: Sustained.

11:55:47 19 MR. CHAMPAIGN: That's fine.

11:55:51 20 Q. So what did you tell Mr. Fulton during this
11:55:54 21 conversation?

11:55:55 22 A. That he was prohibited because he had a felony
11:55:58 23 out of New Jersey.

11:55:59 24 Q. And what do you do with that investigation file
11:56:04 25 after that?

11:56:04 1 A. I contacted my supervisor and we had closed the
11:56:06 2 case out.

11:56:07 3 Q. Do you happen to get another case dealing with
11:56:09 4 Mr. Fulton?

11:56:10 5 A. Yes, sir.

11:56:11 6 Q. And when did that occur?

11:56:12 7 A. It happened on the 9th of July, is when I got
11:56:17 8 assigned the case.

11:56:18 9 Q. And what was the date of the investigation -- or
11:56:22 10 the attempted sale that you were investigating?

11:56:24 11 A. On the 8th of July, 2023.

11:56:27 12 Q. And what materials did you receive in order to
11:56:30 13 help you with that investigation?

11:56:32 14 A. I received the ATF form 4473 and also a criminal
11:56:36 15 history.

11:56:38 16 Q. And what did you do upon receiving that
11:56:39 17 information?

11:56:41 18 A. On July 11th, I went out to Mr. Fulton's
11:56:45 19 residence in [REDACTED] and made contact with him.

11:56:49 20 Q. And did you have a conversation with him?

11:56:50 21 A. I did.

11:56:51 22 Q. And what was the nature of that conversation?

11:56:53 23 A. Advised him why I was there, and I was telling
11:56:56 24 him to quit trying to attempt to purchase a firearm with
11:56:59 25 him being a felon.

11:57:01 1 Q. Did he tell you anything at that point?

11:57:03 2 A. That he had a meeting set up with the Government,
11:57:05 3 and that was about it.

11:57:08 4 Q. Did he seem to understand that he was a convicted
11:57:11 5 felon at that point?

11:57:12 6 A. Yes, sir.

11:57:15 7 Q. What do you do with that investigative file after
11:57:18 8 meeting with Mr. Fulton?

11:57:19 9 A. I submitted a document to my supervisor and we
11:57:22 10 ended up closing that case out.

11:57:26 11 Q. Did you let Mr. Fulton know what would happen if
11:57:30 12 he continued to try to attempt to purchase firearms?

11:57:32 13 A. That he could be prosecuted.

11:57:39 14 Q. Now, did you receive any other investigative
11:57:43 15 files on Mr. Steven Fulton?

11:57:44 16 A. I did. I received another case file on the 8th
11:57:48 17 of August, 2023, where Mr. Fulton had attempted to
11:57:52 18 purchase another firearm.

11:57:54 19 Q. And what date did he attempt to purchase that
11:57:56 20 firearm?

11:57:56 21 A. On the 7th of August.

11:57:59 22 Q. What year?

11:58:00 23 A. 2023.

11:58:02 24 Q. And what did you do upon receiving that
11:58:04 25 information?

11:58:05 1 A. I contacted the U.S. Attorney's Office and I
11:58:08 2 reviewed the 4473 document for the 7th of August and his
11:58:14 3 criminal history.

11:58:16 4 Q. Now, you had mentioned his criminal history. Are
11:58:19 5 you aware of his criminal history?

11:58:20 6 A. I am.

11:58:25 7 MR. CHAMPAIGN: Your Honor, may I approach?

11:58:26 8 THE COURT: Yeah.

11:58:46 9 MR. CHAMPAIGN: One moment, Your Honor.

11:58:57 10 (Mr. Champaign and Ms. Shea confer.)

11:59:19 11 MR. CHAMPAIGN: The Court's indulgence, Your
11:59:20 12 Honor.

11:59:33 13 (Pause.)

11:59:57 14 MR. CHAMPAIGN: May I approach, Your Honor?

11:59:59 15 THE COURT: Yes.

12:00:03 16 (Document handed to the witness.)

12:00:10 17 Q. I have handed you what has been previously
12:00:13 18 admitted as Government Exhibit 14. Do you recognize
12:00:15 19 what that is?

12:00:15 20 A. Yes, sir.

12:00:17 21 Q. What do you recognize it to be?

12:00:18 22 A. It's a true copy of a criminal charge out of New
12:00:24 23 Jersey.

12:00:26 24 MR. CHAMPAIGN: Your Honor, may I publish
12:00:27 25 that to the jury?

12:00:29 1 THE COURT: Yes.

12:00:37 2 Q. Now, this document states that the defendant was
12:00:41 3 convicted of a felony; correct?

12:00:43 4 A. Correct.

12:00:44 5 Q. And what degree was that felony?

12:00:45 6 A. The third degree.

12:00:47 7 Q. In New Jersey, is a third-degree felony
12:00:50 8 punishable by how much years?

12:00:51 9 MS. SHEA: Objection, Your Honor. This
12:00:52 10 witness is not qualified as a legal scholar of Jersey
12:00:56 11 law.

12:00:57 12 THE COURT: Sustained.

12:00:58 13 MR. CHAMPAIGN: Your Honor, I'm not asking
12:00:59 14 him to be qualified as a scholar. If he knows what the
12:01:03 15 punishments are in New Jersey, he can speak to them.

12:01:07 16 THE COURT: I don't think he's qualified.

12:01:09 17 MR. CHAMPAIGN: Understood, Your Honor.

12:01:18 18 Q. So once you receive this information, what do you
12:01:21 19 do next?

12:01:24 20 A. When I receive the criminal history?

12:01:26 21 Q. And the investigation file for that August 7th,
12:01:29 22 transaction.

12:01:29 23 A. Right. I submitted a case file but I also
12:01:34 24 recovered the video from the August attempted
12:01:39 25 transaction date.

12:01:42 1 Q. You received that video from Carolina Caliber;
12:01:46 2 correct?

12:01:46 3 A. I did. On the 16th of August.

12:01:48 4 Q. Now, were you made aware that the defendant
12:01:52 5 attempted to purchase any other firearms?

12:01:55 6 A. I was.

12:01:56 7 Q. And how many times had he attempted to purchase
12:02:00 8 firearms prior to August 7th of the year 2023?

12:02:03 9 A. Seven previous times.

12:02:11 10 MR. CHAMPAIGN: May I approach, Your Honor?

12:02:12 11 THE COURT: Yes.

12:02:18 12 (Document handed to the witness.)

12:02:29 13 Q. I'm handing you what has been previously marked
12:02:31 14 as Exhibits 10 through 6. And we're going to start with
12:02:37 15 Exhibit 10.

12:02:40 16 MR. CHAMPAIGN: Your Honor, may I publish
12:02:42 17 Exhibit 10 to the grand jury -- I mean, to the jury?

12:02:45 18 THE COURT: Yes.

12:02:46 19 MR. CHAMPAIGN: Thank you.

12:02:50 20 Q. Officer Cato, do you recognize this document?

12:02:52 21 A. Yes, sir. It's the ATF Form 4473.

12:02:56 22 Q. And I'm going to point you into Section B of that
12:03:01 23 document, where it states, in question 9, the name of
12:03:05 24 the individual filling out that document. What does it
12:03:07 25 say?

12:03:07 1 A. Steven Nicholas Fulton.

12:03:09 2 Q. Question 10, it states the address for that
12:03:12 3 individual filling out that document. What does that
12:03:15 4 address read?

12:03:16 5 A. [REDACTED]

12:03:20 6 Q. In question 12, it says the height. What height
12:03:24 7 does it state?

12:03:25 8 A. 5'8".

12:03:27 9 Q. Question 13, it says weight. What's the weight?

12:03:30 10 A. 195.

12:03:32 11 Q. Sex, it says what? Question 14.

12:03:36 12 A. Male.

12:03:38 13 Q. And question 15, it says birth date. What's the
12:03:41 14 birth date?

12:03:42 15 A. [REDACTED]

12:03:45 16 Q. Now, I'm going to direct your attention to
12:03:47 17 question 21, specifically question 21(e). It states,
12:03:54 18 "Have you ever been convicted in any court, including a
12:03:57 19 military court, of a felony, or any other crime for
12:04:00 20 which the judge could have imprisoned you for more than
12:04:02 21 one year, even if you received a shorter sentence
12:04:05 22 including probation?" What was the answer to that
12:04:08 23 question?

12:04:09 24 A. He checked, "No."

12:04:12 25 Q. I'm going to direct your attention to the second

12:04:16 1 page, question 22. It states, transferor's or buyer's
12:04:27 2 signature. What's the name of that signature?

12:04:28 3 A. Steven Fulton.

12:04:29 4 Q. And next to that is certification date, question
12:04:32 5 23. What's the date on that transaction?

12:04:35 6 A. It's going to be March 30th of 2023.

12:04:40 7 Q. I'm now going to direct you to page 3. Question
12:04:47 8 33, it states corporate name and address of transferee
12:04:51 9 or seller. Who is the transferee or seller in this
12:04:55 10 particular transaction?

12:04:56 11 A. Dunham's Sports, store 9217.

12:05:01 12 Q. I'm going to direct you to question 34. It
12:05:05 13 states transferee or seller's name. What name is listed
12:05:08 14 there?

12:05:09 15 A. LaKimberly Swinson.

12:05:15 16 Q. I'm now going to direct your attention to Exhibit
12:05:19 17 Number 9. Do you have it?

12:05:36 18 A. Yes, sir.

12:05:37 19 Q. Thank you.

12:05:38 20 I'm going to direct your attention back to
12:05:41 21 Section B, question 9. It states transferee or buyer's
12:05:45 22 full name. What's listed there?

12:05:46 23 A. Steven Nicholas Fulton.

12:05:48 24 Q. Question 10, residence of the individual buying
12:05:52 25 this firearm. What's the residence?

12:05:54 1 A. [REDACTED].

12:05:59 2 Q. Where it goes to question 12, height. What's the

12:06:03 3 height that's listed?

12:06:04 4 A. 5'8".

12:06:05 5 Q. Question 13, what's the weight that's listed?

12:06:08 6 A. 195.

12:06:09 7 Q. Question 14, sex of the individual buying the

12:06:12 8 firearm?

12:06:13 9 A. Male.

12:06:14 10 Q. Question 15, birth date?

12:06:16 11 A. [REDACTED].

12:06:20 12 Q. I direct your attention back to question 21(e),

12:06:25 13 where it states, "Have you ever been convicted in any

12:06:27 14 court, including a military court, of a felony, or any

12:06:29 15 other crime for which the judge could have imprisoned

12:06:32 16 you for more than one year, even if you received a

12:06:34 17 shorter sentence including probation?" What was the

12:06:36 18 answer?

12:06:37 19 A. He checked, "No."

12:06:41 20 Q. I direct you to page 2, question 22, where it

12:06:47 21 says transferee/buyer's signature. What signature is

12:06:51 22 there?

12:06:51 23 A. Steven Fulton.

12:06:53 24 Q. And what's the date in question 23 for when this

12:06:57 25 was filled out?

12:06:57 1 A. April 1st of 2023.

12:07:01 2 Q. I'm going to direct you to page 3, question 33,
12:07:07 3 where it says corporate name and address of transferee
12:07:11 4 or seller. Who is the seller of this firearm -- or this
12:07:15 5 attempt to purchase?

12:07:16 6 A. The seller is going to be Ashton Creech.

12:07:22 7 Q. 33 -- question 33.

12:07:23 8 A. Oh, 33. It's going to be Dunham's Sports, store
12:07:31 9 9217.

12:07:32 10 Q. You jumped a little bit ahead of me, but we are
12:07:32 11 going to question 34. So who was the transferee or
12:07:34 12 seller in question 34?

12:07:35 13 A. It's going to be Ashton Creech.

12:07:40 14 Q. Now I'm going to take you to Government
12:07:44 15 Exhibit 8. Again, I'm going to point you to question 9,
12:07:51 16 transferee or buyer's full name. What's the name that
12:07:54 17 is in question 9?

12:07:55 18 A. Steven Nicholas Fulton.

12:07:58 19 Q. Question 10, what's the address that the buyer
12:08:01 20 put?

12:08:03 21 A. [REDACTED].

12:08:07 22 Q. Question 12, what's the height?

12:08:10 23 A. 5'8".

12:08:11 24 Q. Question 13, what weight did they put?

12:08:13 25 A. 195.

12:08:15 1 Q. Question 14, what's the sex?

12:08:18 2 A. Male.

12:08:19 3 Q. Question 15, what's the birth date?

12:08:22 4 A. [REDACTED]

12:08:26 5 Q. And again, we're going to go to question 21(e),
12:08:30 6 which reads, "Have you ever been convicted in any court,
12:08:33 7 including a military court, of a felony, or any other
12:08:35 8 crime for which the judge could have imprisoned you for
12:08:38 9 more than one year, even if you received a shorter
12:08:40 10 sentence including probation?" What did the defendant
12:08:43 11 answer?

12:08:43 12 A. He checked, "No."

12:08:49 13 Q. Going to question 22 on the next page, where it
12:08:54 14 says transferee/buyer's signature. What's the name of
12:08:57 15 the person who signed?

12:08:58 16 A. Steven Fulton.

12:08:59 17 Q. And what's the date in question 23 for when this
12:09:02 18 was filled out?

12:09:03 19 A. April 15 of 2023.

12:09:07 20 Q. Going to the third page, question 33, where it
12:09:13 21 states the corporate name and address of the transferee
12:09:16 22 or seller of the firearm. What's the name of the
12:09:19 23 company selling this firearm?

12:09:20 24 A. Dunham's Sports, store 9217.

12:09:24 25 Q. And going to question 34, who is the transferee

12:09:28 1 or seller at that time?

12:09:29 2 A. Hunter Tripp.

12:09:35 3 Q. Going to Exhibit 7. Going back to question

12:09:44 4 Number 9, transferor or buyer's full name?

12:09:48 5 A. Steven Nicholas Fulton.

12:09:51 6 Q. Question 10, current state or residence of the

12:09:55 7 buyer?

12:09:55 8 A. [REDACTED].

12:09:59 9 Q. Question 12, height of the buyer?

12:10:01 10 A. 5'8".

12:10:02 11 Q. Question 13, weight of the buyer?

12:10:04 12 A. 195.

12:10:06 13 Q. Question 14, the sex of the buyer?

12:10:08 14 A. Male.

12:10:09 15 Q. Question 15, the birth date of the buyer?

12:10:11 16 A. [REDACTED]

12:10:16 17 Q. Going to question 21(e), "Have you ever been

12:10:19 18 convicted in any court, including a military court, of a

12:10:22 19 felony or any other crime for which the judge could have

12:10:24 20 imprisoned you for more than one year, even if you

12:10:27 21 received a shorter sentence including probation?" What

12:10:29 22 did the buyer answer?

12:10:30 23 A. He checked, "No."

12:10:33 24 Q. Going to question 22 on the next page, where it

12:10:39 25 says transferee or buyer's signature. What signature is

12:10:42 1 in that slot?

12:10:42 2 A. Steven Fulton.

12:10:44 3 Q. Question 23, when was this form filled out?

12:10:47 4 A. April 20th of 2023.

12:10:54 5 Q. Going to question 33, where it states the
12:10:58 6 corporate name and address of the transferee or seller.

12:11:00 7 What company is listed there?

12:11:02 8 A. Dunham's Sports Store 9217.

12:11:06 9 Q. Going to question 34, who was the transferee or
12:11:09 10 seller at that time?

12:11:10 11 A. Emilia Torres.

12:11:15 12 Q. Going to Government Exhibit Number 6. Take you
12:11:21 13 back to question number 9, transferee or buyer's full
12:11:24 14 name. What's the name that's listed?

12:11:26 15 A. Steven Nicholas Fulton.

12:11:29 16 Q. Question 10, the residence of the individual
12:11:31 17 attempting to purchase the firearm?

12:11:33 18 A. [REDACTED].

12:11:37 19 Q. Question 12, height of the individual attempted
12:11:40 20 to purchase the firearm?

12:11:41 21 A. 5'8".

12:11:43 22 Q. Question 13, the weight?

12:11:44 23 A. 193.

12:11:47 24 Q. Question 14, the sex?

12:11:48 25 A. Male.

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12:11:49 1 Q. Question 15, the birth date?

12:11:51 2 A. [REDACTED]

12:11:55 3 Q. Going back to question 21(e), "Have you ever been
12:11:59 4 convicted in any court, including a military court, of a
12:12:02 5 felony, or any other crime for which the judge could
12:12:05 6 have imprisoned you for more than one year, even if you
12:12:08 7 received a shorter sentence including probation?" What
12:12:10 8 did the defendant answer?

12:12:11 9 A. He checked, "No."

12:12:15 10 Q. Going to question 22, transferee or buyer's
12:12:19 11 signature. What name is listed there?

12:12:20 12 A. Steven Fulton.

12:12:22 13 Q. Going to question 23, certification date. What
12:12:25 14 is the date this form was filled out?

12:12:27 15 A. May 26th of 2023.

12:12:33 16 Q. Going to page 3, question 33, corporate name and
12:12:36 17 address of the transferee or seller. What was the name
12:12:39 18 of the company selling this firearm?

12:12:40 19 A. Dunham's Sports, store 9217.

12:12:44 20 Q. Going to question 34, what was the name of the
12:12:47 21 transferor or seller at this time?

12:12:50 22 A. Nadia Swinson.

12:12:56 23 Q. Now, all of the ATF Form 4473 that we just went
12:13:01 24 through were all from Dunham's Sports store; correct?

12:13:05 25 A. Correct.

12:13:05 1 Q. But the defendant attempted to purchase firearms
12:13:07 2 from other stores as well; correct?

12:13:09 3 A. Correct.

12:13:10 4 Q. What other stores are you aware of that he
12:13:12 5 attempted to purchase firearms from?

12:13:14 6 A. The Neuse Sports Shop in Kinston, North Carolina;
12:13:19 7 Academy Sports, a store in Greenville, North Carolina;
12:13:23 8 and Peoples' Pawn in Kinston, North Carolina.

12:13:27 9 Q. So from March of 2023 to August of 2023, how many
12:13:34 10 times did the defendant attempt to purchase firearms?

12:13:37 11 A. Roughly, ten times.

12:13:40 12 Q. And each of those times he filled the ATF Form
12:13:44 13 4473 that we just went through five times -- he filled
12:13:47 14 it out the same way; correct?

12:13:48 15 A. Yes, sir.

12:13:50 16 Q. And each time when he got to question 21(e), he
12:13:53 17 marked "no," correct?

12:13:55 18 A. Correct.

12:14:01 19 MR. CHAMPAIGN: The Court's indulgence.

12:14:03 20 (Pause.)

12:14:07 21 MR. CHAMPAIGN: Nothing further for the
12:14:08 22 witness. Offer for cross.

12:14:09 23 THE COURT: Any cross?

12:14:10 24 MS. SHEA: Yes, Your Honor.

12:14:13 25 CROSS-EXAMINATION BY MS. SHEA:

12:14:13 1 Q. Good afternoon.

12:14:15 2 A. Hi.

12:14:16 3 Q. During your direct testimony, you sort of
12:14:19 4 repeatedly referred to this as attempted purchases;
12:14:22 5 correct?

12:14:22 6 A. Yes, ma'am.

12:14:23 7 Q. And that's because, during your review of the
12:14:26 8 case, none of the transactions ever actually went
12:14:29 9 through for Mr. Fulton; right?

12:14:31 10 A. That's correct.

12:14:31 11 Q. He never actually left a gun store with a gun;
12:14:34 12 right?

12:14:34 13 A. That's correct.

12:14:35 14 Q. And there was no other evidence that you reviewed
12:14:38 15 in your role as case agent that showed that he got a gun
12:14:45 16 in any other manner; right?

12:14:47 17 A. Correct.

12:14:50 18 Q. So I want to speak with you about the reports
12:14:55 19 that you made in this case.

12:14:56 20 A. Yes, ma'am.

12:14:57 21 Q. I have two reports that I was given. One of them
12:15:01 22 is dated August 17th, 2023, and one of them is dated
12:15:10 23 July 11th, 2023. Is that the sum total of your reports
12:15:15 24 in this case?

12:15:15 25 A. Yes, ma'am.

12:15:16 1 Q. Okay. And so I'm going to start with the one on
12:15:23 2 July 11th. It looks like you completed this report of
12:15:29 3 investigation on the actual day that you visited
12:15:32 4 Mr. Fulton; is that right?

12:15:33 5 A. That's correct.

12:15:34 6 Q. Okay. And did you review it in preparation for
12:15:38 7 your testimony?

12:15:39 8 A. I did.

12:15:39 9 Q. Okay. These reports, they're sometimes called
12:15:45 10 ROIs; right -- report of investigation; right?

12:15:47 11 A. Yes, ma'am.

12:15:48 12 Q. Do you always create your ROIs on the day that
12:15:51 13 you conduct interviews?

12:15:53 14 A. Sometimes.

12:15:53 15 Q. Okay. Why is it helpful for you to do so close
12:15:56 16 in time to the actual interview as opposed to months
12:15:59 17 later?

12:16:00 18 A. Just, if I have time to do it that day, I'll do
12:16:04 19 it. But, you know, just to make sure I cover all of the
12:16:08 20 facts.

12:16:08 21 Q. Yeah. Is it also fair to say that you have a
12:16:12 22 better memory of what happened on that day?

12:16:14 23 A. Yes, ma'am.

12:16:16 24 Q. And you never know, like, when something might
12:16:18 25 actually go to trial or become relevant later; right?

12:16:21 1 A. Yes, ma'am.

12:16:21 2 Q. Is it fair to say that sometimes it can take a
12:16:24 3 long time for investigations to actually come into a
12:16:26 4 courtroom?

12:16:26 5 A. Sure.

12:16:28 6 Q. And you would agree that memories can fade with
12:16:31 7 time; right?

12:16:32 8 A. Correct.

12:16:33 9 Q. How many interviews would you say you've
12:16:35 10 conducted since July 11th, 2023?

12:16:42 11 A. Over 50.

12:16:43 12 A. Yeah. It's fair to say, a lot; right?

12:16:46 13 Q. Yes, ma'am. Now, it's fair to say -- it sort of
12:16:51 14 goes without saying, actually -- that you would put the
12:16:53 15 most salient facts in the report; right?

12:16:55 16 A. Correct.

12:16:56 17 Q. Because that's what you're going to want to
12:16:59 18 recall later in time; right?

12:17:00 19 A. Yes, ma'am.

12:17:03 20 Q. Wouldn't you agree that one very important aspect
12:17:06 21 of your direct testimony was that you informed
12:17:10 22 Mr. Fulton that he had a felony conviction that day?

12:17:13 23 A. Yes, ma'am.

12:17:16 24 Q. Yet, that's never mentioned in your report. Did
12:17:20 25 you know that?

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12:17:21 1 A. It should state that he was prohibited.

12:17:24 2 Q. I'm going to pass it up to you.

12:17:26 3 MS. SHEA: May I approach?

12:17:29 4 (Document handed to the witness.)

12:17:52 5 Q. So this -- this report, it's four sentences;
12:17:57 6 right?

12:18:02 7 A. Roughly, six.

12:18:04 8 Q. The first sentence says that you, Chris Melvin,
12:18:10 9 and Philip Peck made contact with Steven Fulton;
12:18:13 10 correct?

12:18:13 11 A. Yes, ma'am.

12:18:15 12 Q. The second sentence says that he was sitting in
12:18:19 13 his vehicle in his driveway; correct?

12:18:21 14 A. That's right.

12:18:22 15 Q. That's all it says.

12:18:23 16 The third sentence is the sum total of what you
12:18:28 17 wrote about what you said. And I'm going to read it out
12:18:31 18 loud. You tell me if I'm making any mistakes. It says,
12:18:33 19 "I advised Mr. Britt" -- I think you mean Mr. Fulton --
12:18:37 20 "to stop trying to purchase a firearm at business and
12:18:41 21 that if he continues to attempt to purchase one, he may
12:18:45 22 get charged." That's what you wrote; right?

12:18:47 23 A. That's correct.

12:18:48 24 Q. The last sentence says, "Mr. Fulton understood
12:18:52 25 but stated he has a meeting scheduled with the

12:18:55 1 Government to have this matter cleared up."

12:18:57 2 That's the entirety of what you wrote; right?

12:19:00 3 A. Yes, ma'am.

12:19:00 4 Q. And so your single sentence about what you told
12:19:04 5 him, it doesn't mention "prohibited person," does it?

12:19:11 6 A. No, ma'am.

12:19:11 7 Q. And it doesn't mention "felony"; right?

12:19:14 8 A. Correct.

12:19:17 9 Q. And it actually says that you told him he may get
12:19:22 10 charged; right? It doesn't say "will"; right?

12:19:26 11 A. That's correct.

12:19:31 12 Q. Did you have any other notes about this
12:19:36 13 interaction?

12:19:36 14 A. No, ma'am.

12:19:36 15 Q. Did you bring a recorder to this conversation?

12:19:39 16 A. I did not.

12:19:40 17 Q. Did you have a cell phone with you when you were
12:19:42 18 there?

12:19:42 19 A. I did.

12:19:43 20 Q. Did the other agents as well?

12:19:45 21 A. They did.

12:19:46 22 Q. Don't they all have recording capabilities?

12:19:49 23 A. Oh, they do.

12:19:53 24 Q. Did you ask Mr. Fulton to sign anything when you
12:20:00 25 departed that day, like, "I've been made aware of XYZ"?

12:20:05 1 A. I did not.

12:20:06 2 Q. Did you give him anything in writing that day?

12:20:09 3 A. No, ma'am.

12:20:16 4 Q. So I want to talk about the other report that you
12:20:19 5 wrote in this case. And it's dated 8/17/2023. Okay?
12:20:30 6 I'm -- I'm going to pass it up to you as well.

12:20:33 7 MS. SHEA: Your Honor.

12:20:36 8 (Document handed to the witness.)

12:20:56 9 Q. So I am looking at the narrative section. And
12:21:02 10 this is paragraph 2 in there, the final sentence. Do
12:21:09 11 you see that?

12:21:09 12 A. Yes, ma'am.

12:21:10 13 Q. It says, "Fulton was also advised by telephone
12:21:14 14 after he tried to purchase a firearm on 6/21/2023." Do
12:21:20 15 you see that?

12:21:20 16 A. Yes, ma'am.

12:21:22 17 Q. That is the sum total of notes that we received
12:21:25 18 about this phone call. Is that all you wrote?

12:21:30 19 A. Yes, ma'am. I notated it in the management log
12:21:33 20 in our in-force computer. But there was not a report
12:21:37 21 generated.

12:21:38 22 Q. Okay. Okay. This is all you chose to include in
12:21:44 23 your report, though; right?

12:21:45 24 A. Yes, ma'am.

12:21:46 25 Q. This sentence says nothing about "felony," does

12:21:50 1 it?

12:21:51 2 A. No, ma'am, it doesn't.

12:21:52 3 Q. Doesn't use the word "prohibited person"; right?

12:21:54 4 A. No, ma'am.

12:21:55 5 Q. What time did you make this call?

12:21:56 6 A. It was after lunch on the 23rd.

12:21:59 7 Q. Okay. How long did it last?

12:22:01 8 A. Roughly, five minutes.

12:22:02 9 Q. Okay. What phone number did you call?

12:22:05 10 A. I actually sent Greene County Sheriff's Office to
12:22:09 11 his residence, and I spoke to him using one of their
12:22:12 12 phones.

12:22:12 13 Q. Oh. You didn't write that down anywhere.

12:22:15 14 A. No, ma'am.

12:22:16 15 Q. Okay.

12:22:22 16 MS. SHEA: Just one moment, Your Honor.

12:22:43 17 (Pause.)

12:22:43 18 Q. Did you record that call?

12:22:44 19 A. No, ma'am.

12:22:49 20 Q. And the only report that you wrote about that
12:22:51 21 call is dated 8/17/2023. That's about two months later;
12:22:57 22 right?

12:22:57 23 A. Yes, ma'am.

12:23:14 24 MS. SHEA: That's all I have.

12:23:15 25 THE COURT: Do you have anything further?

12:23:17 1 MR. CHAMPAIGN: Yes, Your Honor.

12:23:20 2 REDIRECT EXAMINATION BY MR. CHAMPAIGN:

12:23:22 3 Q. Officer Cato, when you had the telephone
12:23:26 4 conversation with the defendant in June, what did you do
12:23:29 5 with the file after that conversation?

12:23:32 6 A. We closed it out.

12:23:34 7 Q. So what was the purpose of you calling the
12:23:37 8 defendant on that date?

12:23:37 9 A. Just to make him aware to quit trying to purchase
12:23:40 10 a firearm.

12:23:40 11 Q. So you had no intent of sending him up for
12:23:45 12 prosecution at that time; correct?

12:23:46 13 A. Correct.

12:23:47 14 Q. And then in between, he attempted to purchase
12:23:49 15 firearms again; correct?

12:23:50 16 A. Correct.

12:23:52 17 Q. And then you had to meet with him in person in
12:23:55 18 July of 2023; correct?

12:23:56 19 A. That's correct.

12:23:56 20 Q. And that's that second report that you created;
12:23:59 21 correct?

12:23:59 22 A. Correct.

12:24:00 23 Q. What was the purpose of that meeting?

12:24:02 24 A. Just to advise him to quit trying to purchase
12:24:05 25 firearms.

12:24:06 1 Q. Now, at this point, you have multiple times
12:24:08 2 advised him not to purchase firearms; correct?

12:24:11 3 A. Correct.

12:24:12 4 Q. What did you do with the case file after that?

12:24:13 5 A. We closed it out.

12:24:16 6 Q. You had no intent at that point to send it up for
12:24:20 7 prosecution; correct?

12:24:21 8 A. Correct.

12:24:22 9 Q. But then, again, the defendant attempted to
12:24:26 10 purchase firearms again; correct?

12:24:28 11 A. Correct.

12:24:32 12 Q. Officer Cato, is this the only case that you were
12:24:35 13 working on in the summer of 2023?

12:24:36 14 A. No, sir.

12:24:37 15 Q. So you had other cases?

12:24:39 16 A. Yes, sir.

12:24:46 17 Q. What would you say your caseload was like in July
12:24:50 18 of 2023? How many cases were you working?

12:24:52 19 A. Four or five.

12:25:02 20 Q. And in terms of those cases, would you say that
12:25:09 21 they involved more discovery than was in this case?

12:25:12 22 MS. SHEA: Objection; relevance.

12:25:13 23 THE COURT: Sustained.

12:25:19 24 MR. CHAMPAIGN: I have nothing further at
12:25:21 25 this time.

12:25:21 1 THE COURT: Are you finished with this
12:25:22 2 witness?

12:25:23 3 MR. CHAMPAIGN: Yes, Your Honor.

12:25:23 4 THE COURT: Okay. You can step down.

12:25:25 5 THE WITNESS: Thank you, sir.

12:25:25 6 THE COURT: Do you have any other witnesses?

12:25:26 7 MR. CHAMPAIGN: The Government has no other
12:25:28 8 witnesses, Your Honor.

12:25:29 9 THE COURT: Huh?

12:25:29 10 MR. CHAMPAIGN: The Government has no other
12:25:30 11 witnesses, Your Honor.

12:25:31 12 THE COURT: You rest?

12:25:31 13 MR. CHAMPAIGN: Yes, Your Honor.

12:25:32 14 THE COURT: Okay. Let me excuse the jury.

12:25:39 15 Ladies and gentlemen, your lunch is here and
12:25:42 16 we'll be back at 1:45. But you can go to lunch now.

12:25:53 17 (The jury is excused at 12:25 p.m.)

12:26:19 18 THE COURT: Some states restore your rights
12:26:21 19 after you serve your sentence and you -- does that have
12:26:28 20 any bearing on this case?

12:26:30 21 MS. SHEA: Your Honor, it's not in evidence,
12:26:32 22 but I do actually believe that he qualifies for
12:26:35 23 expunction of the conviction because he's had a clean
12:26:38 24 record for ten years. But it's not in evidence.

12:26:40 25 THE COURT: Okay.

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12:26:44 1 MS. SHEA: We would make a Rule 29 motion,
12:26:46 2 Your Honor, and we're happy to be heard if Your Honor is
12:26:49 3 willing to hear it now.

12:26:50 4 THE COURT: Yeah, I'll hear it.

12:26:51 5 MS. SHEA: Thank you, Your Honor.

12:26:51 6 So, Your Honor, we respectfully move for a
12:26:55 7 judgment of acquittal under Rule 29. Both parties in
12:26:58 8 our jury instructions have listed four elements that the
12:27:01 9 Government has to prove. The first is that Mr. Fulton
12:27:03 10 made a statement in connection to the acquisition of a
12:27:07 11 firearm. The second is that the statement was false.
12:27:12 12 And that means that he is a felon; right? That's what
12:27:15 13 the Government has to prove. The third is that the
12:27:19 14 defendant knew the statement was false. And the fourth
12:27:22 15 is that the false statement was intended to or likely to
12:27:25 16 deceive the dealer with any fact material to the
12:27:29 17 lawfulness of the sale of the firearm.

12:27:31 18 Your Honor, we believe that the Government
12:27:32 19 has provided insufficient evidence to meet their burden
12:27:35 20 for the second, third, and fourth prongs.

12:27:38 21 With respect to the second prong, Your
12:27:40 22 Honor, the statement is false. So they have the burden
12:27:43 23 of showing that that criminal conviction is for a
12:27:47 24 felony. That's their burden. They have chosen to try
12:27:51 25 to prove that solely through the criminal judgment.

12:27:55 1 Your Honor, I would ask you to look at that judgment and
12:27:59 2 scrutinize it.

12:28:00 3 We can see it's evidence of a conviction.
12:28:03 4 We didn't object to it coming in as a certified record.
12:28:07 5 But that judgment, Your Honor, it never mentions the
12:28:11 6 word "felony." It never mentions the statutory maximum.
12:28:19 7 It never says it. All it says -- it's actually pretty
12:28:22 8 amazing because the North Carolina judgments -- a lot of
12:28:24 9 times, it has ranges; right? And it will say "felony"
12:28:26 10 or have an "F." There is literally nothing on there.

12:28:31 11 And he got 13 days, Your Honor, and two
12:28:34 12 years of probation. That's -- that's the punishment
12:28:37 13 that he actually received. The Government has not
12:28:40 14 provided you with any additional evidence of the
12:28:42 15 statutory penalty for this New Jersey offense. They
12:28:46 16 haven't shown you any statutes with the penalties. They
12:28:50 17 haven't shown you a transcript from any kind of hearing
12:28:53 18 that he had in New Jersey where he was advised of the
12:28:56 19 maximum. They haven't shown you any kind of plea
12:29:00 20 colloquy or anything that he signed in New Jersey saying
12:29:02 21 that he had been advised it was a felony. It is their
12:29:06 22 burden to prove that and they simply have not done so.

12:29:10 23 The third element that they have to prove is
12:29:12 24 that they have to prove that Mr. Fulton knew he had been
12:29:16 25 convicted of a felony. Here, too, the Government has

12:29:20 1 failed. Again, the judgment itself is wholly
12:29:24 2 insufficient to show that Mr. Fulton knew that this was
12:29:27 3 a felony. Never says the maximum, never says the word
12:29:30 4 "felony," et cetera, et cetera.

12:29:32 5 The Government has brought you two things to
12:29:34 6 try to prove his knowledge. The first is that they've
12:29:40 7 brought you testimony from Agent Cato saying that
12:29:43 8 Mr. Fulton -- saying that he told Mr. Fulton he was a
12:29:46 9 felon. However, this conversation was insufficient to
12:29:50 10 imbue Mr. Fulton with knowledge. It doesn't prove that
12:29:53 11 he was actually aware of the true status of the New
12:29:56 12 Jersey conviction, what the true penalties were, what
12:29:59 13 class of crime it was. Just because someone tells you
12:30:02 14 something, it doesn't necessarily mean that you know
12:30:04 15 that that is true.

12:30:06 16 And I think that the client's response in
12:30:10 17 that conversation that he had a meeting to get things
12:30:13 18 cleared up support -- support a conclusion that he
12:30:18 19 actually had a genuine misunderstanding, Your Honor,
12:30:21 20 about his status.

12:30:23 21 Aside from the testimony of Agent Cato, the
12:30:27 22 Government has brought you evidence of these prior
12:30:29 23 failed purchases in 2023. Your Honor, they proved
12:30:33 24 nothing. Because as you've heard, the sales
12:30:35 25 representative is not made aware of the reason someone

12:30:38 1 is denied. So there's no way that those sales
12:30:41 2 representatives could have told him, "You're being
12:30:44 3 denied because of this New Jersey conviction." There's
12:30:46 4 no way that that could have happened, because the sales
12:30:49 5 representatives are not given that information. They
12:30:52 6 simply have not provided the Court with sufficient
12:30:55 7 evidence that Mr. Fulton knew he was a felon.

12:30:58 8 And the fourth element, Your Honor, is the
12:31:00 9 Government has to show that Mr. Fulton intended to
12:31:02 10 deceive the dealer. We believe that his actions are
12:31:06 11 completely consistent with someone who had a good-faith
12:31:10 12 belief that he could possess a firearm. He wanted to
12:31:12 13 legally purchase a firearm. He believed he could pass
12:31:16 14 the background check and that's why he kept filling it
12:31:18 15 out. He never got a gun illegally. He didn't wish to
12:31:21 16 get a gun illegally. He wanted to be a legal purchaser.
12:31:24 17 Again, he told Cato that he had a meeting to clear
12:31:27 18 things up, all consistent with someone who believed that
12:31:30 19 he could be a legal purchaser.

12:31:32 20 There's other evidence that was introduced
12:31:34 21 through the first witness, Your Honor, that supports why
12:31:37 22 Mr. Fulton could have had this mind-set; right? NICS
12:31:41 23 could be incorrect. Denials can be remedied. It's not
12:31:44 24 illegal to go to a gun store after denial to fill out
12:31:47 25 another background check.

12:31:48 1 The Government wants to make this case
12:31:50 2 simple and straightforward, Your Honor. And in many
12:31:53 3 ways it is. They simply have not produced sufficient
12:31:56 4 evidence to prove the last three elements. Thank you.

12:32:02 5 MR. CHAMPAIGN: May I respond, Your Honor?

12:32:03 6 THE COURT: Yes.

12:32:04 7 MR. CHAMPAIGN: Your Honor, I think it's
12:32:05 8 important to know the standard at a motion for judgment
12:32:09 9 of acquittal. A trial judge can grant a motion for
12:32:12 10 judgment of acquittal only when the evidence as a whole
12:32:14 11 is insufficient to support a conviction as a matter of
12:32:16 12 law. Where there is evidence upon where a jury may
12:32:21 13 reasonably base and find guilt beyond a reasonable
12:32:23 14 doubt, the trial judge cannot intrude on the function of
12:32:27 15 the jury. Where there is a basis for the jury to come
12:32:32 16 to a verdict that, beyond a reasonable doubt, the
12:32:35 17 defendant knowingly made a false statement on a ATF 4473
12:32:39 18 form, Your Honor, the jury should have the opportunity
12:32:42 19 to hear and deliberate on it.

12:32:45 20 In this particular case, there's beyond
12:32:47 21 enough evidence, Your Honor. Number one, if we're
12:32:50 22 talking about the felony conviction: By law, this is a
12:32:53 23 felony. We didn't have to put the statute into evidence
12:32:56 24 when we put the judgment, which is a felony by law. In
12:33:01 25 New Jersey, under 2C:43-6, a sentence of imprisonment

12:33:05 1 for a crime. For a third-degree crime, Your Honor, you
12:33:09 2 are looking at three years to five years of
12:33:12 3 imprisonment. That's over the year needed for what is
12:33:16 4 described as a crime punishable by over one year as a
12:33:20 5 felony. So the judgment in itself showing that he was
12:33:23 6 unlawful possession of a firearm in 2007 and that it was
12:33:26 7 a third-degree offense shows that he was a felon.
12:33:30 8 Submitting that is enough for the jury to determine that
12:33:34 9 he was a felon on August 7th of 2023.

12:33:37 10 When we get to a knowledge element, Your
12:33:39 11 Honor, there's multiple ways the Government can prove
12:33:46 12 that the defendant had knowledge of his felon status.
12:33:46 13 Number one, the judgment that shows he was a felon. He
12:33:48 14 was there when he was convicted and sentenced.
12:33:51 15 Number two, we have the fact that Agent Cato told him
12:33:54 16 that he was a felon. Twice. Told him that he was a
12:33:56 17 prohibited person. And he still went and attempted to
12:33:59 18 purchase a firearm in marked fact that he was not. So
12:34:02 19 that's direct evidence that the jury will be able to
12:34:04 20 deliberate on whether he actually received that
12:34:06 21 information and understood it. And it was Cato's
12:34:09 22 testimony that he did understand that he was a
12:34:12 23 prohibited person after their conversation.

12:34:13 24 The third thing that you can look at when we
12:34:16 25 talk about whether the defendant had knowledge and

12:34:18 1 intent is the defendant's own actions. The defendant,
12:34:20 2 in a span of five months, went to four different stores
12:34:25 3 ten different times trying to get a firearm. At no
12:34:29 4 point did he go to the same employees to attempt to
12:34:32 5 purchase these firearms, Your Honor. Because he knew
12:34:35 6 that he was denied multiple times before. So he
12:34:39 7 continued to -- went to different people so they
12:34:42 8 wouldn't already know that, "Hey, I already worked with
12:34:44 9 this guy; he was denied."

12:34:45 10 He was intentionally evading the system,
12:34:48 11 Your Honor. And you heard from IOI Officer David Jones
12:34:54 12 that at times if incorrect information is placed on
12:34:57 13 those ATF Form 4473s, mistakes can happen and
12:35:00 14 individuals who are prohibited can have firearms. The
12:35:04 15 defendant intentionally, with knowledge, lied on the ATF
12:35:07 16 form on August 7th, 2023, Your Honor.

12:35:10 17 THE COURT: Okay. I'll come back with a
12:35:12 18 decision after lunch.

12:35:12 19 MR. CHAMPAIGN: Thank you.

12:35:24 20 (A recess is taken at 12:35 p.m.)

13:58:49 21 (Court is called to order at 1:58 p.m.)

13:58:49 22 (The defendant is present.)

13:59:03 23 THE COURT: Mr. Champaign, where is the
13:59:05 24 evidence that the crime that you're talking about in New
13:59:09 25 Jersey was a felony in New Jersey?

13:59:11 1 MR. CHAMPAIGN: Your Honor, I have the law
13:59:13 2 right here if you want me to pass it up.

13:59:15 3 MS. SHEA: Your Honor, we object to it. The
13:59:17 4 first time that we heard of the -- heard the maximum was
13:59:20 5 in response to our Rule 29. It was never entered into
13:59:24 6 evidence, Your Honor.

13:59:24 7 MR. CHAMPAIGN: Your Honor, this is a legal
13:59:26 8 question; it's not a factual question.

13:59:28 9 THE COURT: I think it's a factual question.

13:59:31 10 MR. CHAMPAIGN: Your Honor, it's my
13:59:32 11 understanding that when we're talking about whether a
13:59:37 12 law is what it says it is, that is strictly a legal
13:59:40 13 question.

13:59:40 14 THE COURT: Say that again.

13:59:40 15 MR. CHAMPAIGN: Whether a law is what it
13:59:42 16 says it is, is strictly a legal question for Your Honor
13:59:45 17 to decide, not for the jury to decide. It is not a
13:59:48 18 factual determination whether the law is a felony. It
13:59:52 19 either is a felony or it's not a felony. And it's
13:59:56 20 stated within the law. And it's Your Honor's purview to
13:59:59 21 look at the law and determine if it is a felony.

14:00:02 22 Now, I have the law that states --

14:00:04 23 THE COURT: But you didn't put it into
14:00:06 24 evidence. You didn't put a transcript into evidence.

14:00:09 25 MR. CHAMPAIGN: I put the certified judgment

14:00:10 1 into evidence which stated the crime that he was found
14:00:14 2 guilty of. That's the felony.

14:00:16 3 THE COURT: It doesn't say that it's a
14:00:18 4 felony.

14:00:18 5 MR. CHAMPAIGN: Because in New Jersey, they
14:00:20 6 don't put that in their judgments. But the crime itself
14:00:23 7 is a felony. So that's enough for the jury to determine
14:00:27 8 that it was a felony. Because it is, in fact, a felony.
14:00:30 9 And I do have the statute that ensures a third-degree
14:00:35 10 offense in New Jersey is a felony. So it isn't a
14:00:38 11 determination that the jury can say, "You know what?
14:00:40 12 We're going to say that's not a felony." They don't
14:00:42 13 have that option. If it is a felony, that's what it is,
14:00:45 14 Your Honor.

14:00:45 15 THE COURT: But it's whether he knew it was
14:00:47 16 a felony.

14:00:48 17 MR. CHAMPAIGN: That's another argument,
14:00:49 18 Your Honor. We can have that argument.

14:00:50 19 But in terms of whether that judgment showed
14:00:52 20 that he was a felon: This third-degree offense in New
14:00:56 21 Jersey is a felony, and it is up to your determination
14:00:58 22 based on the statute. Because it's a legal question,
14:01:01 23 not a factual question.

14:01:02 24 Now, his knowledge as to whether it was a
14:01:04 25 felony, that's a question that can go back to the jury,

14:01:08 1 and I can make that argument later. But in fact of
14:01:11 2 whether the actual crime is a felony, that's by law,
14:01:15 3 Your Honor, in the statute, and I have it for you right
14:01:18 4 here.

14:01:18 5 THE COURT: All right.

14:01:21 6 MS. SHEA: Your Honor, our -- I'm sorry.
14:01:23 7 Thank you.

14:01:23 8 (Document handed to the Court.)

14:01:45 9 MR. CHAMPAIGN: And if Your Honor wants a
14:01:47 10 specific place to look, you can look at Section 3. It
14:01:52 11 goes straight to the crime of a third-degree for a
14:01:55 12 specific term of years shall be affixed by the court and
14:01:58 13 shall be three years to five years. Which is more than
14:02:01 14 one year, Your Honor.

14:02:05 15 THE COURT: What do you want to say?

14:02:06 16 MS. SHEA: Your Honor, I still think they
14:02:09 17 have a sufficiency-of-the-evidence problem because they
14:02:11 18 didn't ask you to look at this law or take judicial
14:02:13 19 notice of anything during their case. It's still
14:02:18 20 something that they have to prove. It's one of the
14:02:19 21 elements of the crime. They have to prove that his
14:02:22 22 statement that he's not a felon is false. And so
14:02:26 23 they're asking you to do all of this after the close of
14:02:29 24 evidence. And so we think they have a
14:02:31 25 sufficiency-of-the-evidence problem because they didn't

14:02:33 1 introduce any of this during their case.

14:02:35 2 MR. CHAMPAIGN: Your Honor, when you talk
14:02:37 3 about judicial notice, you do judicial notices for
14:02:39 4 factual determinations. This isn't a factual
14:02:41 5 determination. I couldn't ask you to take judicial
14:02:43 6 notice of something that is a legal concern. That is a
14:02:46 7 decision that you make in the form that we're making it
14:02:48 8 now, Your Honor. And it is what it is.

14:02:50 9 The reason that we have already presented
14:02:53 10 the evidence that is sufficient to determine that he's a
14:02:55 11 felon is because his certified judgment says that he's
14:02:58 12 the felon. He was convicted of a third-degree offense
14:03:00 13 in New Jersey. A third-degree offense in New Jersey is
14:03:03 14 a felony because he can get up to three to five years as
14:03:06 15 a result of that conviction. It is what it is. We did
14:03:09 16 submit that into evidence, and the jury can make that
14:03:11 17 determination that he's a felon based off of that
14:03:14 18 conviction.

14:03:14 19 Now, if they want to have a conversation
14:03:15 20 about whether he had knowledge about whether he's a
14:03:18 21 felon, that's a different story, and the Government is
14:03:20 22 ready to argue that as well. But in this particular
14:03:23 23 instance, they cannot make an argument saying that the
14:03:25 24 jury can make a determination on what a felony is.
14:03:28 25 That's not their purview; that's yours, Your Honor.

14:03:48 1 THE COURT: Let me take another recess.

14:15:24 2 (A recess is taken at 2:03 p.m.)

14:15:24 3 (Court is called to order at 2:15 p.m.)

14:15:27 4 (The defendant is present.)

14:15:27 5 THE COURT: Sorry for the delay. This is a

14:15:29 6 critical point in the case. I'm going to take it under

14:15:34 7 advisement and allow the Government to go forward at

14:15:39 8 this point and see if there's any evidence and what the

14:15:42 9 jury might do.

14:15:44 10 Do you have evidence?

14:15:45 11 MS. SHEA: We don't, Your Honor.

14:15:48 12 THE COURT: You don't?

14:15:49 13 MS. SHEA: We don't have evidence.

14:15:50 14 THE COURT: You're not going to offer any

14:15:52 15 evidence?

14:15:52 16 MS. SHEA: No, Your Honor.

14:15:52 17 THE COURT: Okay.

14:15:53 18 MS. SHEA: We don't.

14:15:55 19 We would ask Your Honor to consider

14:15:59 20 instructing the Government that they cannot state the

14:16:02 21 stated maximum of three to five years in their closing

14:16:06 22 argument. We think that it's problematic the way that

14:16:10 23 they've tried to ask for you to instruct the jury on

14:16:14 24 this after the close of evidence.

14:16:16 25 We also note that the statute that they

14:16:18 1 passed up was not in effect at the time that the client
14:16:20 2 was convicted.

14:16:21 3 THE COURT: Was what?

14:16:23 4 MS. SHEA: Was not in effect at the time
14:16:24 5 that the client was convicted.

14:16:27 6 THE COURT: Okay.

14:16:27 7 MR. CHAMPAIGN: May I address those two
14:16:28 8 issues, Your Honor?

14:16:28 9 THE COURT: Yeah.

14:16:29 10 MR. CHAMPAIGN: Again, because we believe
14:16:31 11 that the order that we already placed into evidence is
14:16:35 12 enough evidence for the jury to make a determination on,
14:16:38 13 I had no plans of saying that, you know, this was
14:16:40 14 three-to-five-year offense. That certified copy of the
14:16:44 15 judgment was already enough to prove that he was a
14:16:48 16 felon. So that's one point, Your Honor.

14:16:50 17 The second point: They mention that the
14:16:52 18 effective date of the law that we passed up was August
14:16:57 19 of 2013. This is another copy of a law -- an old copy
14:17:01 20 of the law that says the same thing, Your Honor. It
14:17:03 21 didn't change. This is 2008, if they want this copy as
14:17:07 22 well. So when it was in effect, now, we have all copies
14:17:10 23 of the law which states it's the same thing.

14:17:15 24 THE COURT: So do you want to renew your
14:17:17 25 Rule 29 motion? Aren't you supposed to do that if

14:17:20 1 you've rested?

14:17:22 2 MS. SHEA: Yes, Your Honor. We would renew
14:17:23 3 our Rule 29 motion on the same grounds that we
14:17:26 4 previously stated.

14:17:27 5 THE COURT: I mean, raising it at the end of
14:17:29 6 the Government's evidence and then again at the end of
14:17:32 7 the case is prerequisite to the Court keeping that a
14:17:37 8 live issue.

14:17:37 9 MS. SHEA: Yes, Your Honor. I'm sorry. I
14:17:39 10 just wanted to look at something because I wanted to
14:17:41 11 make one -- another objection. That he was convicted in
14:17:45 12 2007. So if the law is in effect in 2008, it's still
14:17:48 13 not the right law.

14:17:51 14 Your Honor, at this -- at this time, we
14:17:54 15 would renew our Rule 29 motion for the same reasons that
14:17:58 16 we've already articulated. We think that the Government
14:18:01 17 has major sufficiency-of-the-evidence problems with
14:18:04 18 respect to the second, third, and fourth elements of the
14:18:08 19 offense. I'm happy to go through the reasons again, but
14:18:11 20 it's largely the same as the prior one.

14:18:14 21 THE COURT: All right. I'll hold that in
14:18:16 22 abeyance and allow the case to be argued to the jury.

14:18:22 23 MS. SHEA: Thank you, Your Honor.

14:18:23 24 MR. CHAMPAIGN: And I understand you're
14:18:24 25 holding this decision, Your Honor. There is one other

14:18:25 1 thing that the Government wants to put on your radar.
14:18:28 2 The Government's proposed jury instruction Number 25
14:18:32 3 directly talks about a crime punishable by imprisonment
14:18:35 4 for a term exceeding one year. And within that
14:18:38 5 instruction we are asking the -- Your Honor to state
14:18:41 6 that, "I hereby instruct you that the crime of unlawful
14:18:43 7 possession of a weapon, handgun, is a felony in the
14:18:46 8 state of New Jersey punishable by imprisonment for a
14:18:48 9 term exceeding one year" --

14:18:49 10 THE COURT: I'm not going to do that because
14:18:50 11 you didn't put that into evidence, and I'm not going to
14:18:55 12 comment on evidence that wasn't in the case. So...

14:19:01 13 MR. CHAMPAIGN: Your Honor, I guess this is
14:19:02 14 the same argument that we've been arguing for the Rule
14:19:05 15 29. The fact that that is the law, it is what it is.
14:19:09 16 And mentioning where she said about the effective date,
14:19:13 17 the law that I was stating says effective to January 12,
14:19:17 18 2008. So it would have been in effect when he was
14:19:19 19 convicted in 2007.

14:19:21 20 I can give you a copy if you want.

14:19:22 21 MS. SHEA: Thank you.

14:19:24 22 MR. CHAMPAIGN: The law is the law, Your
14:19:25 23 Honor. We put into evidence his certified judgment
14:19:27 24 saying he was a felon. I understand you're holding that
14:19:30 25 under advisement. But a decision on that would, having

14:19:34 1 been made prior to this jury instruction -- because
14:19:36 2 we're just asking you to state the law, not a fact. The
14:19:39 3 jury instructions are stating what the law is
14:19:42 4 surrounding these elements, Your Honor. Yeah.

14:19:50 5 THE COURT: You -- you didn't put in
14:19:59 6 anything with respect to the judgment that says the word
14:20:03 7 "felony."

14:20:04 8 MR. CHAMPAIGN: And I think this is just a
14:20:06 9 different way the states do it, Your Honor. In terms
14:20:09 10 of --

14:20:09 11 THE COURT: Well, that's your burden,
14:20:10 12 though. You know, you should do it the way it needs to
14:20:13 13 be done.

14:20:14 14 MR. CHAMPAIGN: I believe this is the way it
14:20:16 15 needs to be done. Unlike in North Carolina where there
14:20:18 16 is the word "felony" in the judgments, New Jersey does
14:20:21 17 it different. They just put the degree. They put the
14:20:23 18 crime, the statute in that certified judgment. And we
14:20:27 19 submitted that certified judgment that has the statute,
14:20:29 20 that has the degree. I'm sure, in New Jersey, everyone
14:20:31 21 knows that a third-degree felony -- third-degree offense
14:20:34 22 is a felony. But we're here in North Carolina, so it's
14:20:36 23 a little different. But, Your Honor, that is, once you
14:20:39 24 look at the statute, a felony. By law, by the book.
14:20:44 25 Because the statute says that it's -- the punishment is

14:20:47 1 three to five years if you are convicted of a
14:20:51 2 third-degree offense. And that's it.

14:20:52 3 THE COURT: But the word "felony" doesn't
14:20:53 4 appear anywhere.

14:20:54 5 MR. CHAMPAIGN: It doesn't. They do things
14:20:56 6 differently than we do in North Carolina, Your Honor. I
14:20:57 7 admit that. But --

14:20:58 8 THE COURT: You have the burden of proof;
14:21:00 9 they don't have a burden of proof.

14:21:02 10 MR. CHAMPAIGN: And I'm not trying to shift
14:21:03 11 the burden, Your Honor. What I'm saying is, the
14:21:05 12 certified judgment that we submitted into evidence is
14:21:07 13 the proof that he's a felon because he was convicted of
14:21:10 14 a third-degree offense.

14:21:11 15 THE COURT: But you didn't put on any
14:21:14 16 evidence that that's a felony.

14:21:15 17 MR. CHAMPAIGN: But it is -- so, Your Honor,
14:21:16 18 the statute that was in that judgment states that it's a
14:21:20 19 felony. So I guess if you were to say that that's not
14:21:24 20 the case, the jury would have to make a determination on
14:21:26 21 law. When I was -- actually had our law --

14:21:30 22 THE COURT: No. It's whether he knew he was
14:21:31 23 a felon.

14:21:32 24 MR. CHAMPAIGN: That's a separate question,
14:21:33 25 Your Honor. That's a separate thing. Whether he knew

14:21:36 1 he was a felon is a separate element than whether the
14:21:39 2 felony is a felony. I am prepared to argue whether he
14:21:42 3 knew he was a felon, and I think that is a fact that
14:21:44 4 goes back to the jury.

14:21:45 5 But whether the actual statute is a felony
14:21:48 6 is a separate legal question. When I asked Officer Cato
14:21:52 7 on the stand whether a third-degree offense in New
14:21:55 8 Jersey was a felony, you said you can't answer that;
14:21:57 9 you're not a legal expert. Neither is the jury, Your
14:22:00 10 Honor. You are the legal expert. And in this
14:22:02 11 particular instance, it is up to your determination,
14:22:06 12 after you look at the statute, look at the punishments,
14:22:08 13 and look at the actual law, to determine whether that
14:22:10 14 law is a felony. And if that law is a felony, then that
14:22:15 15 certified judgment is enough evidence to say he's a
14:22:17 16 felon. Then we can get to the argument about whether he
14:22:20 17 knew he was a felon. And I have other evidence to prove
14:22:22 18 that. But that certified judgment is enough to say he
14:22:25 19 is a felon because that law is a felony. One plus one
14:22:29 20 is two every day, Your Honor.

14:23:47 21 THE COURT: The indictment says -- you have
14:23:48 22 the indictment?

14:23:50 23 MS. SHEA: Yes, Your Honor.

14:23:51 24 THE COURT: The indictment says, "Knowingly
14:24:02 25 made a false and fictitious written statement to

14:24:07 1 Carolina Caliber which was intended" -- so there's
14:24:13 2 intent there. "Which was intended and also likely to
14:24:18 3 deceive Carolina Caliber as to a fact material to the
14:24:24 4 lawfulness of such sale of said firearm to the defendant
14:24:29 5 under Chapter 44, Title 18 in that he did execute a
14:24:36 6 Department of Justice Bureau of ATF and Explosives Form
14:24:44 7 4473, Firearms Transaction Record, and represented that
14:24:48 8 he had not previously been convicted of a crime
14:24:52 9 punishable by imprisonment for a term of one year."

14:25:06 10 How could it have been likely to deceive
14:25:10 11 Carolina Caliber when they ran a record check on him?

14:25:18 12 MR. CHAMPAIGN: May I answer that, Your
14:25:20 13 Honor?

14:25:20 14 THE COURT: Go ahead.

14:25:21 15 MR. CHAMPAIGN: Or at least the Government's
14:25:22 16 position.

14:25:23 17 It's the Government's position, Your Honor,
14:25:24 18 that a multitude of things that the defendant did showed
14:25:27 19 that he intended to deceive Carolina Caliber. He didn't
14:25:31 20 actually have to deceive them; it's whether he intended
14:25:34 21 to. In this particular case, he definitely intended to.
14:25:37 22 There's no other reason for him to go into that --

14:25:39 23 THE COURT: But it wasn't likely. It's in
14:25:40 24 the -- it's intended and likely to deceive. There's no
14:25:46 25 way they were going to be deceived if his felony

14:25:51 1 conviction popped up on the screen.

14:25:53 2 MR. CHAMPAIGN: Your Honor, I think the
14:25:54 3 testimony from IOI Officer David Jones says otherwise.
14:25:59 4 He stated that there are times when some individuals put
14:26:04 5 false information on the ATF Form 4473s and they do slip
14:26:08 6 through the system and prohibited people get firearms.
14:26:11 7 And that's what the defendant was intending to do.
14:26:13 8 That's why he was going to different firearm stores.
14:26:16 9 That's why he wasn't going to the same employees. He
14:26:18 10 was hoping to slip through the system and then get a
14:26:22 11 prohibited firearm -- then get a firearm even though he
14:26:23 12 knew he was prohibited.

14:26:24 13 So again -- and it is in the disjunctive as
14:26:26 14 well, Your Honor. Even though it says "and," you don't
14:26:28 15 need both. One of the two is good enough. And in this
14:26:32 16 particular case, I think we have enough evidence to at
14:26:36 17 least get to the jury to make a determination on whether
14:26:38 18 the defendant intentionally was trying to deceive
14:26:42 19 Carolina Caliber. And that's what he was doing.
14:26:44 20 There's no other reason for him to go to the store and
14:26:46 21 lie on the form unless he was trying to get a gun
14:26:50 22 knowing he was prohibited.

14:26:52 23 THE COURT: Well, there is another
14:26:53 24 explanation: That he didn't believe he was a felon.

14:26:56 25 MR. CHAMPAIGN: But Your Honor, he had

14:26:57 1 multiple avenues of information telling that he was. He
14:27:01 2 was denied nine times prior to August 7th.

14:27:04 3 THE COURT: Well, he's consistent. He went
14:27:06 4 back and applied for a gun permit over and over and over
14:27:12 5 and over again.

14:27:13 6 MR. CHAMPAIGN: Yes, Your Honor. Well,
14:27:14 7 whether he believes that he is a felon doesn't change
14:27:19 8 the fact that he is a felon. That he was told by Daryl
14:27:23 9 Cato twice that he was a felon. The fact that he was
14:27:26 10 denied nine times. The fact that he -- and if he really
14:27:30 11 believed that, it wouldn't have been an issue for him to
14:27:33 12 go to any employee at that store and attempt to get a
14:27:36 13 firearm again. He intentionally went to different
14:27:38 14 individuals every time because he knew that they knew he
14:27:41 15 was prohibited. So he had to go to somebody new.

14:27:43 16 THE COURT: Okay. Do you want to say
14:27:47 17 anything?

14:27:47 18 MS. SHEA: No, Your Honor. We just object
14:27:48 19 to that jury instruction. We just wanted to note our
14:27:53 20 objection to that instruction.

14:27:53 21 THE COURT: Okay.

14:27:53 22 MS. SHEA: Thank you, Your Honor.

14:27:54 23 That was instruction Number 25.

14:28:00 24 THE COURT: Was that handed up?

14:28:02 25 MS. SHEA: That was filed, Your Honor, in

14:28:04 1 the Government's --

14:28:05 2 MR. CHAMPAIGN: Jury instruction.

14:28:06 3 MS. SHEA: -- amended jury instructions at
14:28:08 4 docket entry 40. And it's instruction Number 25, which
14:28:13 5 is at page 32. We just note our objection to it. But
14:28:18 6 we know that Your Honor's heard a lot of argument and
14:28:21 7 we're ready to proceed with closing.

14:28:32 8 THE COURT: You object to jury instruction
14:28:35 9 25? Is that it?

14:28:37 10 MS. SHEA: That's the one that Mr. Champaign
14:28:38 11 is talking about. It's saying that you instruct that
14:28:42 12 the crime of unlawful possession of a weapon is a felony
14:28:45 13 in the state of New Jersey. That's the final sentence
14:28:49 14 of that instruction.

14:28:51 15 THE COURT: That's what?

14:28:51 16 MS. SHEA: That's the final sentence of that
14:28:53 17 proposed instruction. That's what we object to
14:28:56 18 specifically.

14:28:59 19 THE COURT: And you're saying that there's
14:29:01 20 no evidence of that?

14:29:01 21 MS. SHEA: We're saying that they have a
14:29:03 22 sufficiency-of-the-evidence problem because they
14:29:05 23 didn't -- we don't believe that they've provided enough
14:29:08 24 of a basis for that instruction.

14:29:21 25 THE COURT: Well, I agree, and I won't

14:29:23 1 include that.

14:29:26 2 MR. CHAMPAIGN: Your Honor, this is the same
14:29:29 3 argument we're having for the Rule 29, whether it is the
14:29:33 4 actual law or not. And this is very similar to, I want
14:29:39 5 to say, a 922(g) case in terms of 922(g) doesn't have
14:29:43 6 the penalties --

14:29:44 7 THE COURT: It's not like a 922 case at all,
14:29:46 8 because it's only about intent.

14:29:49 9 MR. CHAMPAIGN: Knowledge and intent, Your
14:29:51 10 Honor. And again, that is different than the argument
14:29:53 11 about whether the actual law is, in fact, a felony. The
14:29:58 12 only thing that we need to prove that the law is a
14:30:00 13 felony is the statute. And the statute in this case
14:30:03 14 says that the law is a felony. He can receive up to
14:30:07 15 three to five years of imprisonment based on a
14:30:10 16 conviction of a third-degree offense. I don't think
14:30:13 17 there's an argument against that. If it is a legal
14:30:16 18 question, it does not go to the jury. The jury are not
14:30:19 19 legal experts; they only do factual determinations.

14:30:21 20 THE COURT: If it's a legal question, it
14:30:23 21 wouldn't be in the instructions.

14:30:25 22 MR. CHAMPAIGN: It would be in the
14:30:26 23 instructions, Your Honor. That's the -- legal
14:30:29 24 instructions are --

14:30:29 25 THE COURT: Legal questions aren't --

14:30:31 1 MR. CHAMPAIGN: -- law.

14:30:32 2 THE COURT: Legal questions aren't for the
14:30:33 3 jury.

14:30:33 4 MR. CHAMPAIGN: Exactly. I agree, legal
14:30:36 5 questions aren't for the jury. And this is a legal
14:30:38 6 question. What they're asking should be determined by
14:30:40 7 the jury is a legal question about whether the statute
14:30:43 8 is a felony. That is a determination for you, Your
14:30:47 9 Honor, not the jury to make. The only thing that the
14:30:50 10 Government needed to provide for the jury to make the
14:30:52 11 determination was that he was, in fact, convicted of a
14:30:56 12 felony. The certified judgment showed that he was
14:30:58 13 convicted of a felony. The determination of whether a
14:31:02 14 felony is a felony is up to you, Your Honor, and you can
14:31:04 15 do that by looking at the statute. And the statute
14:31:06 16 states that it's a felony. There really is no more
14:31:09 17 argument outside of that. They are trying to make this
14:31:12 18 a factual determination, and it's not a factual
14:31:14 19 determination; it is a legal question. You are correct,
14:31:18 20 Your Honor.

14:31:18 21 THE COURT: All right. That's enough.

14:31:21 22 MR. CHAMPAIGN: Understood.

14:31:30 23 THE COURT: Are you ready to argue?

14:31:32 24 MS. SHEA: We are. Yes.

14:31:33 25 THE COURT: Are you ready?

14:31:34 1 We'll take a recess, bring the jury back in,
14:31:36 2 and we'll have closing argument.

14:31:46 3 (A recess is taken at 2:31 p.m.)

14:50:38 4 (Court is called to order at 2:50 p.m.)

14:50:38 5 (The defendant is present.)

14:50:38 6 THE COURT: Ladies and gentlemen, the
14:50:38 7 parties have rested and that's all the evidence in the
14:50:38 8 case. At this stage, each side will have an opportunity
14:50:38 9 to make a closing argument to summarize and interpret
14:50:38 10 their position in the case. So the Government gets to
14:50:38 11 go first because it has the burden of proof, and then
14:50:38 12 the defense. And if the Government wants to answer
14:50:38 13 anything with rebuttal, it can do that. And then I'll
14:50:38 14 give you instructions on the law. So we're in the last
14:50:38 15 phases of the trial right now.

14:50:38 16 The jury will be with the Government for
14:50:38 17 closing statement.

14:50:38 18 MR. CHAMPAIGN: I'm not going to complicate
14:50:38 19 this case for you because the law is clear and the facts
14:50:38 20 are simple. On August 7th, the year 2023, the
14:50:38 21 defendant, Steven Fulton, entered the Carolina Caliber
14:50:38 22 in Winterville, North Carolina, a federally licensed
14:50:38 23 licensee, FFL, and attempted to purchase a firearm.
14:50:38 24 When he attempted to purchase that firearm, he had to
14:50:38 25 fill out a Firearm Transaction Record, also known as ATF

14:50:38 1 Form 4473.

14:50:38 2 Now, you heard from Industry Operations
14:50:38 3 Investigator David Jones why this form is important.
14:50:38 4 It's the only legal document law enforcement has to
14:50:38 5 track the ownership of firearms. It's one of the
14:50:38 6 greatest tools that they have to ensure the individuals
14:50:38 7 who are prohibited from having firearms are not allowed
14:50:38 8 to get firearms.

14:50:38 9 So on August 7th, the year 2023, the
14:50:38 10 defendant, Steven Fulton, looked at that ATF form. He
14:50:38 11 read it. He went to question 21(e), where it states,
14:50:38 12 "Have you ever been convicted in any court, including a
14:50:38 13 military court, of a felony, or any other crime for
14:50:39 14 which the judge could have imprisoned you for more than
14:50:39 15 one year, even if you receive a shorter sentence
14:50:39 16 including probation?" He read that question. He
14:50:39 17 answered it. And he lied. Knowing that he was a felon,
14:50:39 18 he answered, "No."

14:50:39 19 Now, the question you're going to be asking
14:50:39 20 is: Well, Mr. Champaign, how do we know that the
14:50:39 21 defendant was, in fact, a felon? Well, we know because
14:50:39 22 there's a certified judgment from New Jersey of a felony
14:50:39 23 conviction he received in 2007. For 16 years, the
14:50:39 24 defendant was in felony status. And all of a sudden, he
14:50:39 25 wants you to believe he just forgot?

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14:50:39 1 Well, let's take him at his word for a
14:50:39 2 second that slipped his mind that for nearly two decades
14:50:39 3 he was a felon. You also had testimony from ATF Task
14:50:39 4 Force Officer Daryl Cato who told you he spoke with the
14:50:39 5 defendant not once, but twice. Once, in June of 2023
14:50:39 6 after the defendant attempted to purchase a firearm and
14:50:39 7 was denied, he had a telephone conversation with him.
14:50:39 8 "Hey, you're prohibited. Stop doing this. Stop trying
14:50:39 9 to get firearms." Okay. He closed the case. He wasn't
14:50:39 10 trying to jam him up at that point. He made his point
14:50:39 11 clear that he wasn't supposed to have a firearm and
14:50:39 12 hopefully he would never deal with Mr. Fulton again.

14:50:39 13 But we know that he had another conversation
14:50:39 14 with Mr. Fulton on July 11th of 2023. And this time,
14:50:39 15 considering Mr. Fulton had again attempted go to two
14:50:39 16 FFLs and purchase firearms again, that maybe he need to
14:50:39 17 make his point a little more clear. Maybe he need to
14:50:39 18 actually look him in his eyes and let him know, "You
14:50:39 19 cannot possess a firearm. You are a prohibited person
14:50:39 20 based off of that 2007 felony conviction."

14:50:39 21 The defendant told him, Oh, yeah, I'll clear
14:50:39 22 that up, no worries.

14:50:39 23 But what do we know happened next? Just a
14:50:39 24 few weeks later, the defendant entered Carolina Caliber
14:50:39 25 on August 7th of 2023. Nothing has changed. Nothing

14:50:39 1 was cleared up. Yet, what did he do? For the tenth
14:50:39 2 time, he attempted to purchase a firearm knowing he was
14:50:39 3 a felon. For the tenth time, he looked at that ATF Form
14:50:39 4 4473. He checked "no" in box 21(e).

14:50:39 5 Well, Mr. Champaign, how do we know that he
14:50:39 6 knew that he was a felon? Well, there's a multitude of
14:50:39 7 ways. One of which, again, how many times had he
14:50:39 8 attempted to get a firearm? One, two, three, four,
14:50:39 9 five, six, seven, eight, nine, and then finally
14:50:40 10 August 7th of 2023, he tried again. Each time being
14:50:40 11 denied. Each time he filled out the form the same way.

14:50:40 12 Now, you may have been asking as I was going
14:50:40 13 through the forms with ATF Daryl Cato, *Why does he keep*
14:50:40 14 *asking these same questions, going over these same*
14:50:40 15 *questions on the form? It's the same thing every time*
14:50:40 16 *we did it.* The only thing that was different on the
14:50:40 17 forms was who was giving him the firearm. What employee
14:50:40 18 he was working with.

14:50:40 19 Well, that's another reason why you should
14:50:40 20 know the defendant knew what he was doing. Between
14:50:40 21 March 30th of 2023 and May 26th of 2023, the defendant
14:50:40 22 went to Dunham's Sports shop, the same Dunham's Sports
14:50:40 23 shop five times. Weeks and days in between. And each
14:50:40 24 time he went, he never worked with the same employee.
14:50:40 25 Never worked with the same sales associate. Why, you

14:50:40 1 may ask? It was intentional. He knew that if he went
14:50:40 2 to the same person who already denied him, they wouldn't
14:50:40 3 even let him fill out the form. "We just saw you last
14:50:40 4 week."

14:50:40 5 So he intentionally went to a different
14:50:40 6 person each time because he knew what the answer would
14:50:40 7 be after he filled out that form: Denied. Why?
14:50:40 8 Because he was a felon.

14:50:40 9 The Government has proven their case beyond
14:50:40 10 a reasonable doubt.

14:50:40 11 Now, I'm not the master of law in this
14:50:40 12 courtroom. The judge is. So if anything I tell you
14:50:40 13 about the law differs from what you're going to hear
14:50:40 14 from the Court, you go with the Court. But I do want to
14:50:40 15 point out some aspects of his law that are important for
14:50:40 16 when you go back there and you deliberate in terms of
14:50:40 17 applying the law to the facts in this case. So you
14:50:40 18 don't have to listen to me when I say the Government has
14:50:40 19 proven its case beyond a reasonable doubt; let's look at
14:50:40 20 the law.

14:50:40 21 There are four elements needed to prove a
14:50:40 22 defendant knowingly made a false statement to a
14:50:40 23 federally firearm licensed dealer. Those elements are
14:50:40 24 that on or about August 7th, the year 2023, in
14:50:40 25 connection with the acquisition of a firearm from a

14:50:40 1 licensed dealer, the defendant made a written statement
14:50:40 2 as evidenced by the Department of Justice Bureau of
14:50:40 3 Alcohol, Tobacco, Firearm and Explosives Form 4473.
14:50:40 4 Well, we know that on August 7th, the year 2023, the
14:50:41 5 defendant went to Carolina Caliber, he filled out that
14:50:41 6 Firearm Transaction Record. In question 21(e), he
14:50:41 7 stated he wasn't a felon when, in fact, he was. You can
14:50:41 8 check that box.

14:50:41 9 That the statement was false. We know the
14:50:41 10 defendant was a felon. Him stating that he's not a
14:50:41 11 felon is a false statement. You can check that box.

14:50:41 12 That the defendant knew such statement to be
14:50:41 13 false. Let's look at all the other evidence that we
14:50:41 14 have. The defendant had been a convicted felon for 16
14:50:41 15 years. And it just happened to slip his mind on
14:50:41 16 August 7th, 2023, or the nine other times that he
14:50:41 17 attempted to purchase firearms and was denied? No. The
14:50:41 18 defendant knew that he was a felon. The defendant knew
14:50:41 19 that when he clicked that box, that he was lying, he was
14:50:41 20 not telling the truth. Because he wanted to purchase a
14:50:41 21 firearm. You can check that box.

14:50:41 22 That the false statement was intended or
14:50:41 23 likely to deceive the dealer with respect to any fact
14:50:41 24 material to the lawfulness of the sale of the firearm.

14:50:41 25 This one is important. Because it could be

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14:50:41 1 a little bit confusing, but it's not. Did the defendant
14:50:41 2 intend to deceive Carolina Caliber? What other reason
14:50:41 3 did he go into that store to fill that form out rather
14:50:41 4 than to get a firearm? He didn't actually have to get
14:50:41 5 that firearm. If he went there with the intent to get
14:50:41 6 that firearm and lied with that intention, that element
14:50:41 7 is made out. We know there's no other reason that he's
14:50:41 8 filled out that form outside of trying to illegally
14:50:41 9 possess a firearm.

14:50:41 10 His intentions were clear on his actions by
14:50:43 11 not going to the same associate any of the times he went
14:50:43 12 to the same stores over and over again.

14:50:43 13 The fact that Daryl Cato had a conversation
14:50:43 14 with him, told him -- looked him in his eye and told him
14:50:43 15 he was a felon. Yet, he still, just weeks later, went
14:50:43 16 to Carolina Caliber and filled out that form stating
14:50:43 17 that he wasn't. And the fact that he was denied nine
14:50:43 18 times. You can check that box.

14:50:43 19 The Government has made its case beyond a
14:50:43 20 reasonable doubt. But I want to be clear: While the
14:50:43 21 standard of beyond a reasonable doubt is a high standard
14:50:43 22 in the legal system, it does not mean beyond any doubt.
14:50:43 23 The doubt must be reasonable. And can you truly say
14:50:43 24 based on the evidence you heard today that you have any
14:50:43 25 reasonable doubt that the defendant did not lie on that

14:50:43 1 ATF Form 4473?

14:50:43 2 Each of you were selected for this jury not
14:50:43 3 simply picked out of a hat. And you were selected in
14:50:43 4 part from your life experiences and the parties believe
14:50:43 5 that you can use your common sense. Don't leave those
14:50:43 6 aspects of yourself at the door. Bring them with you
14:50:43 7 when you're in the jury deliberation room. Use them as
14:50:43 8 you begin to apply the law to the facts in this case.
14:50:43 9 And when you do, the Government is confident that you
14:50:43 10 will return with the only verdict that is consistent
14:50:43 11 with the evidence in this case, and that's a verdict of
14:50:43 12 guilty. Thank you.

14:50:43 13 THE COURT: All right. The jury will be
14:50:43 14 with the defendant.

14:50:43 15 MS. SHEA: Thank you, Your Honor. I just
14:50:43 16 have a couple of easels to set up for demonstratives of
14:50:43 17 some of the evidence that was introduced.

14:50:43 18 THE COURT: Okay.

14:50:43 19 MS. SHEA: It will just be a moment.

14:50:43 20 THE COURT: Okay.

14:51:36 21 (Pause.)

14:51:40 22 MS. SHEA: Good afternoon. Members of the
14:51:45 23 jury, the American criminal justice system is the best
14:51:48 24 in the world. It's one of the things that makes
14:51:52 25 America, America: The right to be tried by a jury. The

14:51:56 1 right to have a jury decide whether or not the
14:51:58 2 Government can prove beyond a reasonable doubt the
14:52:02 3 defendant is guilty. It's designed to protect people
14:52:04 4 like Mr. Fulton and people like you and me when the
14:52:09 5 Government accuses us of a crime.

14:52:11 6 You, the jury, are one of the things that
14:52:13 7 makes this system so special. You have to weigh the
14:52:18 8 evidence and decide what makes sense. You may feel like
14:52:21 9 the job ahead of you is hard. Hard because you have a
14:52:25 10 man's life in your hands. But in another sense, it's
14:52:29 11 simple. Simple in the sense that you don't have to find
14:52:32 12 him innocent -- although he is innocent. The only
14:52:36 13 question that you have to decide is whether or not the
14:52:39 14 Government has eliminated every reasonable doubt. And
14:52:44 15 unless you eliminate every reasonable doubt, you must
14:52:48 16 acquit and find him not guilty.

14:52:51 17 The Government here is trying to prosecute
14:52:54 18 someone for repeatedly trying to legally purchase a
14:53:00 19 weapon. The Government is asking you to infer deceit
14:53:04 20 from someone who was trying to follow a legal process.

14:53:09 21 Now, the Government has been making good use
14:53:11 22 of technology today. I'm a bit more old school, pen and
14:53:15 23 paper. I will not be able to make a PowerPoint like
14:53:18 24 theirs if I wanted to. And so I'm going to ask you to
14:53:22 25 write down five reasons to doubt for you to take back

14:53:25 1 with you in the jury room and discuss. There are more
14:53:28 2 than five, but I want to go over these five with you.

14:53:33 3 Okay. First one: No evidence Fulton knew
14:54:05 4 New Jersey conviction was a felony. Okay?

14:54:11 5 Mr. Champaign referenced two things. First
14:54:14 6 thing was that he said one of the elements was that he
14:54:17 7 had -- the Government had to prove that the New Jersey
14:54:19 8 conviction was a felony and also that the defendant knew
14:54:23 9 that it was a felony. Okay? This is how they have
14:54:27 10 chosen to prove it, giving you this judgment. Okay?

14:54:34 11 First of all, there's no evidence that our
14:54:36 12 client has ever seen this judgment. Okay? There's no
14:54:40 13 evidence that he was mailed that judgment, got that
14:54:43 14 judgment. But this is what they've shown. Okay? When
14:54:47 15 you go back into the jury room, I want you to read every
14:54:52 16 word of this judgment. Because nowhere on this judgment
14:54:56 17 does it say the word "felony." Never says the word.
14:55:01 18 Nowhere in this judgment does it say the maximum
14:55:07 19 penalty. The Government has introduced no evidence, not
14:55:13 20 one piece of evidence, to show that Mr. Fulton was
14:55:19 21 instructed what the maximum penalties are. And you
14:55:22 22 sitting here today right now after the close of
14:55:26 23 evidence, you don't know what the maximum penalties are.
14:55:28 24 You don't know what the maximum that you could have
14:55:31 25 gotten for this charge was.

14:55:33 1 There's some other things I want to point
14:55:35 2 out. Nowhere in any of this fine print does it say, for
14:55:39 3 example, that Mr. Fulton was prohibited from possessing
14:55:42 4 a firearm. It doesn't say anything.

14:55:46 5 And then you will also notice the number of
14:55:50 6 days that he spent in custody. Thirteen. That's all he
14:55:53 7 got. And then placed on probation for two years. That
14:56:00 8 was his sentence. Okay?

14:56:06 9 I want you to also, when you're back there,
14:56:09 10 take a look at one of the Government's exhibits. This
14:56:12 11 is Government's Exhibit 5. I'm sorry, Government's
14:56:15 12 Exhibit 1 at page 5. It's one of the many forms.
14:56:18 13 They're all the same. They all have the same list of
14:56:20 14 exceptions at the back. Okay? Read this. Read this
14:56:24 15 exception. It is confusing. Okay? It's confusing for
14:56:28 16 a lawyer to read; I bet it's confusing for a number of
14:56:31 17 you to read. But there are a number of exceptions that
14:56:36 18 allow you to answer "no." Okay? So there are a number
14:56:44 19 of exceptions that allow a person to answer "no" to this
14:56:47 20 question.

14:56:49 21 For example, one of them is what if you were
14:56:56 22 convicted of a misdemeanor punishable by imprisonment of
14:57:00 23 two years or less? You should answer no.

14:57:04 24 Has the Government excluded the possibility
14:57:07 25 that this crime is properly classified as a misdemeanor

14:57:10 1 or that Mr. Fulton thought that? Doesn't even come
14:57:15 2 close. No.

14:57:17 3 Let's go to the second reason to doubt:
14:57:35 4 Number of attempts does not equal knowledge. Okay?

14:57:40 5 That's a large part of the Government's
14:57:42 6 case: He went to the gun store ten times that means he
14:57:47 7 knew.

14:57:49 8 No, it doesn't. That is not true because
14:57:54 9 going to the gun store multiple times and trying to fill
14:57:57 10 out the form doesn't mean that you knew of what your
14:58:00 11 prohibited status was.

14:58:02 12 I think a key part of the evidence was from
14:58:05 13 both of the first two witnesses. The sales rep is not
14:58:09 14 made aware of the reason that someone is denied. So
14:58:12 15 when Mr. Fulton went to the gun store first time, second
14:58:17 16 time, third time, the sales rep is not telling him, "You
14:58:19 17 failed on this question." They're not telling him that.
14:58:21 18 You know why? Because they can't. Because they don't
14:58:25 19 actually have the knowledge of that. Right? So he's
14:58:27 20 not being informed of which question is triggering the
14:58:32 21 denial. Okay?

14:58:35 22 You also heard that it was possible -- from
14:58:37 23 the gentleman who testified first, that it's possible
14:58:40 24 that NICS can have erroneous information. Just because
14:58:46 25 you go to a store and you get a "deny" message doesn't

14:58:49 1 mean that you have knowledge that you are a prohibited
14:58:51 2 person. You could also have a genuine belief that
14:58:54 3 there's a misunderstanding.

14:58:57 4 You also heard that it's possible to remedy
14:58:59 5 a denial.

14:59:00 6 You also heard that it's not illegal in and
14:59:04 7 of itself to go back to a gun store after you get a
14:59:07 8 "deny" message.

14:59:11 9 Number 3: No gun. He never actually got a
14:59:22 10 gun. Okay? You heard -- you heard no evidence that any
14:59:27 11 of these attempts were successful. This is consistent
14:59:32 12 with someone who wants to be a legal purchaser of a
14:59:35 13 weapon. Okay? Someone who is operating with a
14:59:39 14 good-faith belief. The Government is asking you to
14:59:43 15 infer deceit from someone who is trying to do something
14:59:46 16 legally. You heard from Agent Jones -- and you know
14:59:49 17 this even without this testimony -- that there are other
14:59:51 18 ways to get a gun in North Carolina. You can go to a
14:59:55 19 gun show. You can buy a gun on the black market.
14:59:58 20 There's no evidence that he sought to obtain a gun
15:00:01 21 elsewhere. Again, his actions are consistent with
15:00:04 22 wanting to be a legal purchaser.

15:00:10 23 Four. What did he tell Agent Cato? He told
15:00:26 24 Agent Cato when he visited him that he had a meeting to
15:00:30 25 clear things up. Again, that's consistent with someone

15:00:34 1 who has a misunderstanding. It's consistent with
15:00:39 2 someone who did not have knowledge of his status that
15:00:44 3 prohibited him from buying a gun.

15:00:56 4 The fifth reason is that Agent Cato's
15:01:00 5 testimony does not solve the Government's lack of
15:01:04 6 evidence.

15:01:06 7 Ladies and gentlemen, so much of
15:01:12 8 Agent Cato's testimony should be scrutinized. It was
15:01:15 9 not recorded, the phone call or the visit. There was
15:01:20 10 three agents that went to go visit Mr. Fulton. They all
15:01:24 11 have recording devices. They didn't record the call --
15:01:27 12 the meeting. They didn't leave him anything in writing.
15:01:31 13 They didn't show him anything from New Jersey. There is
15:01:34 14 no detail whatsoever in that report. You'll recall that
15:01:40 15 he admitted that he wrote one sentence about what he
15:01:45 16 told him, which was to stop trying to purchase a firearm
15:01:49 17 at business and that if he continues to attempt to
15:01:51 18 purchase one, he may get charged. That's the sum total
15:01:54 19 of what he wrote. And he literally wrote nothing about
15:01:58 20 the phone call. Nothing. Literally nothing.

15:02:05 21 Ladies and gentlemen, you should be outraged
15:02:08 22 by the lack of reporting by this federal task force
15:02:12 23 officer. It should absolutely give you pause and
15:02:16 24 question his credibility.

15:02:18 25 And think about it other ways: What do you

15:02:21 1 do -- say a loved one's in the hospital and they're
15:02:23 2 having a hospital stay for a few days and things don't
15:02:26 3 go well. When the person gets out, what's the first
15:02:30 4 thing that you ask -- tell them to do? Write everything
15:02:34 5 down. Write everything down while it's fresh in your
15:02:37 6 mind; right? Write notes about every single thing that
15:02:40 7 happens.

15:02:40 8 Because you know what? As the months pass,
15:02:42 9 things get jumbled. It doesn't even have to be
15:02:46 10 something as morbid as a hospital stay. Think about
15:02:48 11 when you go to the airport just for a three-day weekend,
15:02:51 12 what do you do? Last time Halerie and I were at the
15:02:54 13 airport, you know what we did? We wrote down where we
15:02:58 14 parked. Wrote it on our parking ticket. Right? To
15:03:01 15 make sure that you're going to remember where your car
15:03:03 16 was.

15:03:03 17 He wrote nothing down. His report was four
15:03:08 18 sentences. The first two said nothing about the sum of
15:03:11 19 the conversation. One sentence says what he said. One
15:03:16 20 sentence says what the client said. And that's it. And
15:03:18 21 then elaborating on all of this detail months later, you
15:03:22 22 know what that's called? It's called overreach. Even
15:03:29 23 if you believe that Agent Cato said what he said, that
15:03:34 24 he told him that he was a felon, that does not translate
15:03:39 25 into Mr. Fulton having the knowledge that he was a felon

15:03:44 1 in New Jersey. Okay?

15:03:46 2 You heard the judge. He prohibited
15:03:50 3 Agent Cato from testifying about what the maximum
15:03:53 4 penalty was in New Jersey because he's not a legal
15:03:55 5 scholar. Right? He can't tell you what the maximum
15:03:59 6 penalties are in the state of New Jersey, and how is he
15:04:02 7 qualified to tell Mr. Fulton?

15:04:06 8 And again, Mr. Fulton's response that he was
15:04:10 9 going to clear things up, again, supports a genuine
15:04:13 10 misunderstanding. The fact that he went back to
15:04:17 11 Carolina Caliber after this visit, again, supports a
15:04:21 12 genuine misunderstanding.

15:04:23 13 Ladies and gentlemen, the Government wants
15:04:25 14 you to see the number of attempts that Agent Cato visits
15:04:30 15 as evidence that the client knew he was a felon. This
15:04:34 16 calls for wild speculation as to what was going on in
15:04:37 17 Mr. Fulton's mind because his actions are equally
15:04:42 18 legally if more compellingly aligned with someone who
15:04:45 19 was trying to be a legal purchaser of a gun. Someone
15:04:48 20 who believed there was a misunderstanding. When the
15:04:50 21 jury can view things one of two ways, reasonably
15:04:55 22 permitting either of two calculations, one of guilty and
15:04:58 23 one of not guilty, you must find him not guilty.

15:05:03 24 I would be remiss if I did not point out
15:05:05 25 this red herring that the Government mentioned in their

15:05:08 1 closing, which was that he intentionally sought out
15:05:11 2 different sales reps at the store -- at the stores.
15:05:15 3 There has been no evidence that that was intentional.
15:05:19 4 Literally, no evidence.

15:05:22 5 So, for example, one of the forms said he
15:05:26 6 went to a woman named something and the next time he
15:05:28 7 goes to someone else, was there even evidence that that
15:05:31 8 woman was working the next time? Was she terminated?
15:05:35 9 What was the evidence that he intentionally sought out
15:05:39 10 different sales reps? You know what that is? That's
15:05:43 11 overreach. That's what you do when you don't have
15:05:46 12 enough evidence.

15:05:48 13 In America, the Government has the burden of
15:05:51 14 proving Mr. Fulton guilty beyond every reasonable doubt
15:05:54 15 in each and every one of your minds. And it's just
15:05:57 16 that. It's a burden, and it's the heaviest burden under
15:05:59 17 the law to eliminate all reasonable doubt. The
15:06:03 18 Government has not come close to doing it in this case.
15:06:06 19 Because they can't. They've left you with doubts. Here
15:06:09 20 are five, but I'm sure that there are others in each of
15:06:13 21 your mind's as well.

15:06:15 22 The Government has asked you to assume and
15:06:18 23 to speculate what was in his mind. And that's not
15:06:21 24 enough. That's not getting you proof. That's not
15:06:25 25 getting you evidence. In America, we demand proof

15:06:28 1 beyond a reasonable doubt. We don't convict a man for
15:06:30 2 lying about a felony based on a judgment that never says
15:06:35 3 the word "felony." We don't convict a man whose actions
15:06:38 4 are wholly consistent with wanting to be a legal
15:06:41 5 purchaser of a weapon. We don't convict a man whose
15:06:44 6 words to an agent shows that he believed that there was
15:06:46 7 a genuine misunderstanding. We don't convict a man
15:06:50 8 based on speculation. We demand more.

15:06:53 9 The Government has woefully failed to prove
15:06:56 10 their case. And we ask you to find him not guilty.

15:07:15 11 MR. CHAMPAIGN: Can you keep those up there?

15:07:17 12 MS. SHEA: Oh, yeah.

15:07:28 13 THE COURT: The Government can have
15:07:30 14 rebuttal.

15:07:30 15 MR. CHAMPAIGN: Thank you, Your Honor.

15:07:37 16 You know, I had a grandmother, too. And she
15:07:41 17 used to set boundaries as well. She used to tell me:
15:07:44 18 One time, that's a mistake. Second time, that's a
15:07:51 19 decision. Third time, there is no third time.

15:08:00 20 When you look at the argument that defense
15:08:04 21 counsel is making based on the evidence that you have
15:08:08 22 seen in this case, it doesn't hold water. She is
15:08:14 23 telling you that the Government is asking you to infer
15:08:19 24 things that are not there. You're going to hear an
15:08:23 25 instruction from the judge later on about something

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15:08:26 1 called "circumstantial evidence." Evidence you can use
15:08:32 2 based on the circumstances in a case to show that the
15:08:37 3 evidence is there.

15:08:39 4 One of the best ways I was told to describe
15:08:44 5 certain potential evidence is imagine walking in a
15:08:46 6 snowstorm. There's someone is in front of you. You
15:08:49 7 can't see the footsteps that they are making. But when
15:08:52 8 you look down, you see the footprints in the snow. So
15:08:55 9 you didn't actually see them make the footprints but you
15:08:59 10 know that they had to make them. They're the only
15:09:02 11 person around. They're the only person walking in front
15:09:04 12 of you. Even though you didn't actually see them make
15:09:07 13 the footprints, you can make the inference that they're
15:09:09 14 the one that did it.

15:09:11 15 There's a number of evidentiary things that
15:09:17 16 you've heard today that allow you to infer what the
15:09:23 17 defendant was doing on August 7th of 2023. One time is
15:09:29 18 a mistake. One time is a mistake. A second time is a
15:09:34 19 decision. Ten times, it's far past any of that. It's
15:09:42 20 not simply that he went to these federally firearm
15:09:47 21 dealers and marked that he was not a felon when, in
15:09:54 22 fact, he was. There was numerous opportunity he had to
15:09:59 23 remedy that situation. You heard from Deborah Hinson
15:10:05 24 [sic] that they -- and you heard from OIO Officer David
15:10:07 25 Jones, that when you deny, they give you information to

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15:10:10 1 look up, "Hey, why was I denied?" To find that
15:10:13 2 information. We know you had a conversation with Daryl
15:10:18 3 Cato where he told him, "Hey, you're being denied
15:10:21 4 because you're a felon." He said he was going to clear
15:10:23 5 it up. He had the opportunity to. Nothing was cleared
15:10:27 6 up before he went back and made the decision to mark,
15:10:31 7 "No, I'm not a felon," on August 7th of 2023.

15:10:37 8 We're talking about a voluntary decision he
15:10:40 9 made knowing that he had already been denied nine
15:10:45 10 previous times. Knowing that Officer Cato already told
15:10:49 11 him, "Hey, you are a felon. A felony conviction from
15:10:52 12 New Jersey makes you ineligible to purchase or have a
15:10:56 13 firearm." He could have easily cleared that up prior to
15:11:00 14 trying to go back to Carolina Caliber and purchase
15:11:03 15 another firearm. He didn't do that. He went back and
15:11:08 16 filled the form out how he had filled it out nine
15:11:12 17 previous times. Trying to sneak around the system which
15:11:17 18 we know can happen based off testimony you heard.

15:11:21 19 So when you look at Government Exhibit 1 at
15:11:26 20 page 5, have you convicted of a state misdemeanor
15:11:33 21 punishable by two years of imprisonment or less?

15:11:38 22 That's not the only thing you need to look
15:11:40 23 at. You also need to look at question 21(e), which
15:11:44 24 specifically says, as I've read it to you maybe five or
15:11:47 25 six times today, "Have you ever been convicted in any

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15:11:50 1 court, including a military court, of a felony or any
15:11:53 2 other crime which the judge could have imprisoned you
15:11:57 3 for more than one year, even if you receive a shorter
15:12:00 4 sentence including probation?"

15:12:01 5 The sentence he receive does not matter.
15:12:03 6 It's what the charge was. Was it a felony? Yes, it
15:12:09 7 was. And had this occurred on just the defendant's
15:12:15 8 first instance of trying to buy a gun, maybe it's an
15:12:17 9 argument you would make. Not on a tenth time. Not
15:12:22 10 on -- after you've been told by an officer twice that
15:12:24 11 you're a felon. It's not a mistake anymore. You're not
15:12:28 12 believing you have a misdemeanor. You've been told that
15:12:30 13 it's not. And without clearing it up, you went back.
15:12:35 14 And knowing that it is a crime to make a false statement
15:12:40 15 on the form, you mark it anyway. You didn't care,
15:12:43 16 because you wanted a firearm bad enough.

15:12:53 17 Attempts are not knowledge. That's correct.
15:12:58 18 In and of itself, attempts are not knowledge. But you
15:13:00 19 have more than attempts. It's attempts corroborated by
15:13:04 20 the other evidence in this case. It's an attempt
15:13:07 21 corroborated by the fact that this is a defendant who
15:13:10 22 had been a convicted felon for 16 years. Are you trying
15:13:12 23 to tell me throughout 16 years of life nothing else
15:13:15 24 reminded him that he was a felon? He didn't have to put
15:13:18 25 it down on a housing application? A job application?

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15:13:23 1 At no other point in 16 years he had to be reminded he
15:13:29 2 was a felon.

15:13:32 3 It's not just the attempts. It is attempts,
15:13:36 4 it's the knowledge he received from Daryl Cato, and it's
15:13:41 5 his own actions.

15:13:42 6 This is definitely where circumstantial
15:13:44 7 evidence comes into play. They say we have no evidence
15:13:47 8 that he did intentionally go to different individuals at
15:13:51 9 these stores. Well, we know that he went ten times
15:13:55 10 within five months. He went to one store five times.
15:13:59 11 And after he went through five different employees,
15:14:03 12 that's when he started to go to other stores. It was
15:14:10 13 intentional. And it was -- he did the actions to
15:14:15 14 deceive these FFLs in order to get a firearm.

15:14:22 15 No gun. I don't even know why it's up
15:14:25 16 there. The charge is not that he possessed a gun. The
15:14:28 17 charge is that he was attempting to get one. And in an
15:14:31 18 attempt to get one, he lied. Whether there was a gun or
15:14:34 19 not is not a question for you to be making a
15:14:38 20 determination on. It's not whether he actually got one;
15:14:41 21 it's whether or not he was attempting to get one and
15:14:44 22 lied to do so. He did. He was a felon; he said he
15:14:49 23 wasn't.

15:14:56 24 Let's go to Daryl Cato. The defense is
15:15:01 25 making a big deal of the reports that Officer Cato made.

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15:15:06 1 And it's one of the things that I wanted to point out
15:15:08 2 when I redirected him about what his job duties are. I
15:15:13 3 know it was clear to all of you based on how he
15:15:16 4 proceeded with this case that he was not trying to just
15:15:20 5 charge Mr. Fulton with a felony. After the first
15:15:24 6 conversation he had with him in June, he said, "I closed
15:15:26 7 the case. I gave him the information. Hopefully, he
15:15:29 8 would never have to see him again."

15:15:30 9 But that's not the case. Mr. Fulton
15:15:34 10 attempted to get guns two more times after that. The
15:15:37 11 case had to go back in front of Daryl Cato and he had to
15:15:43 12 investigate him. And this time, giving Mr. Fulton,
15:15:46 13 again, the benefit of the doubt, he didn't go straight
15:15:48 14 there and then charge him with lying on a federal
15:15:51 15 firearm form. He told him in person, looked him in the
15:15:57 16 eyes, "Hey. You are a felon. I told you this before;
15:16:00 17 I'm going to tell you again: Stop attempting to get
15:16:03 18 firearms." He wasn't planning on having to come here to
15:16:08 19 court and testify to this because he was hoping that
15:16:11 20 Mr. Fulton would stop. He had other cases that he had
15:16:13 21 to deal with, four or five other cases he told you that
15:16:16 22 he was working on.

15:16:17 23 And it's not a law that you have to write
15:16:19 24 down every single word that comes out of an individual's
15:16:22 25 mouth that you're interviewing. You get the gist of the

15:16:26 1 conversation what you did with Officer Cato's report.
15:16:30 2 Because he is going to come in here and testify and tell
15:16:32 3 you exactly what happened. Which he did. He took the
15:16:38 4 stand, he took an oath and he told you the truth. It
15:16:43 5 wasn't until the defendant made him prosecute this case
15:16:47 6 by continuing to attempt to purchase firearms that
15:16:52 7 brought us in court today. The Government has proven
15:16:57 8 the case beyond a reasonable doubt based on the evidence
15:17:02 9 that you've heard today. Thank you.

15:17:06 10 And Your Honor, I would like to make an
15:17:08 11 objection to defense counsel's closing argument where
15:17:12 12 she stated that the jury would be the finders of whether
15:17:15 13 a felony actually occurred in this case. That's a legal
15:17:17 14 question, Your Honor. Thank you.

15:17:19 15 THE COURT: Objection overruled.

15:17:46 16 Ladies and gentlemen, you've heard all of
15:17:47 17 the evidence in this case as well as the arguments of
15:17:49 18 the lawyers for the parties. It's my duty at this point
15:17:53 19 to instruct you on the rules of law. You must follow
15:17:56 20 and apply that in arriving at your decision in the case.

15:18:00 21 In any jury trial there are, in effect, two
15:18:03 22 judges. I am one of the judges and you as the jury are
15:18:06 23 the other judge. It's my duty to preside over the trial
15:18:10 24 and to determine what testimony and evidence is relevant
15:18:13 25 under the law for your consideration. And it's also my

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15:18:16 1 duty at the end of the trial to instruct you on the
15:18:19 2 rules of law applicable to the case. You as jurors are
15:18:23 3 the judge of the facts in determining what actually
15:18:27 4 happened in this case; that is, in reaching your
15:18:30 5 decision as to the facts. It's your sworn duty to
15:18:33 6 follow the law I am now in the process of defining for
15:18:37 7 you.

15:18:39 8 And you must follow all of my instructions
15:18:41 9 as a whole. You have no right to disregard or give
15:18:46 10 special attention to any instruction or to question the
15:18:49 11 wisdom or correctness of any rule of law that the Court
15:18:53 12 gives you. You must not substitute or follow your own
15:18:57 13 notion or opinion of what the law is or ought to be.
15:19:00 14 It's your duty to apply the law as the Court presents it
15:19:03 15 to you regardless of the consequences.

15:19:07 16 It's also your duty to base your verdict
15:19:09 17 solely upon the testimony and the evidence in the case
15:19:12 18 without any prejudice or sympathy. That was the promise
15:19:16 19 you made and the oath you took before being accepted by
15:19:19 20 the parties as jurors in this case, and the parties have
15:19:22 21 the right to expect nothing less from you.

15:19:26 22 As stated earlier, it's your duty to
15:19:29 23 determine the facts, and in so doing, you must consider
15:19:32 24 only the evidence in the case that's been admitted. The
15:19:36 25 term "evidence" includes the sworn testimony of the

15:19:38 1 witnesses and the exhibits admitted into the record.
15:19:44 2 You will recall that the statements, objections, and
15:19:46 3 arguments made by the lawyers are not the evidence in
15:19:49 4 the case. The lawyers have an important duty to point
15:19:52 5 out those things that they believe to be most
15:19:55 6 significant or beneficial to their side in the case, and
15:20:00 7 in so doing, to call your attention to certain facts or
15:20:03 8 inferences that might otherwise escape your notice.

15:20:07 9 In the final analysis, however, it is your
15:20:09 10 own recollection and your interpretation of the evidence
15:20:12 11 that controls in the case. In other words, what the
15:20:16 12 lawyers say is not binding on you.

15:20:20 13 If, during the course of the trial, I made
15:20:22 14 any comment or ruling or asked any question or
15:20:26 15 admonished any witness, you're not to assume from
15:20:30 16 anything that I have done that I have a position or
15:20:33 17 opinion about the outcome of the case. Except for my
15:20:37 18 instructions to you on the law, you should disregard
15:20:40 19 anything I might -- may have said during the trial in
15:20:42 20 arriving at your finding as to the facts.

15:20:47 21 So while you should consider only the
15:20:49 22 evidence in the case, you're permitted to draw such
15:20:52 23 reasonable inferences from the testimony and exhibits
15:20:55 24 that you feel are justified in the light of your common
15:20:58 25 experience. In other words, you may make such

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15:21:02 1 deductions and reach such conclusions that your reason
15:21:05 2 and your common sense leads you to draw from the facts
15:21:09 3 which have been established by the testimony and the
15:21:11 4 evidence in the case.

15:21:13 5 You may also consider both the direct and
15:21:16 6 the circumstantial evidence. Direct evidence is the
15:21:20 7 testimony of a person who asserts actual knowledge of a
15:21:23 8 fact, such as an eyewitness. Circumstantial evidence is
15:21:29 9 proof of a chain of facts and circumstances indicating
15:21:32 10 either the guilt or innocence of the defendant. The law
15:21:36 11 does not make a distinction between the weight to be
15:21:39 12 given to either direct or circumstantial evidence. It
15:21:43 13 requires only that you weigh all of the evidence and be
15:21:46 14 convinced of a defendant's guilt beyond a reasonable
15:21:50 15 doubt before that person can be convicted.

15:21:53 16 Now, I have said that you must consider all
15:21:55 17 of the evidence. This does not mean that you must
15:21:59 18 accept all of the evidence -- all of the evidence as
15:22:04 19 true or as accurate. You are to be the sole judge of
15:22:08 20 the credibility or believability of every witness and
15:22:11 21 the weight or importance that you want to give to that
15:22:14 22 testimony.

15:22:16 23 In weighing the testimony of a witness, you
15:22:18 24 may consider that person's relationship to the
15:22:21 25 Government or to the defendant; a person's interest, if

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15:22:26 1 any, in the outcome of the case; a person's manner of
15:22:30 2 testifying; the person's opportunity to observe or
15:22:34 3 acquire knowledge about the facts that the witness
15:22:37 4 testifies to; a witness's candor, fairness, and
15:22:42 5 intelligence, and the extent to which what the witness
15:22:46 6 says has been either supported by or contradicted by
15:22:51 7 other credible evidence in the case.

15:22:54 8 You may, in short, accept or reject the
15:22:58 9 testimony of any witness in whole or in part. The
15:23:01 10 weight of the evidence is not necessarily determined by
15:23:04 11 the number of witnesses testifying as to some fact or
15:23:08 12 the existence or nonexistence of that fact. You may
15:23:12 13 find that the testimony of a smaller number of witnesses
15:23:15 14 as to some fact is credible and more credible than the
15:23:19 15 testimony of a larger number of witnesses to the
15:23:22 16 contrary.

15:23:24 17 A witness may be discredited or impeached by
15:23:27 18 contradictory evidence, by showing that the witness
15:23:31 19 testified falsely about an important matter, or by
15:23:35 20 evidence that at some other time, the witness had said
15:23:38 21 or done something or has failed to say or do something
15:23:41 22 which is inconsistent with the witness's present
15:23:46 23 testimony.

15:24:07 24 I caution you, ladies and gentlemen, that
15:24:09 25 you are here to determine the guilt or innocence of the

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15:24:13 1 defendant from the evidence in this case. The defendant
15:24:16 2 is not on trial for any other act or conduct or offense
15:24:19 3 not specifically alleged in the indictment. The matter
15:24:26 4 of punishment that the law provides for any offense
15:24:29 5 charged in an indictment is a matter left within the
15:24:32 6 authority of the Court and should never be considered by
15:24:35 7 you as a jury in arriving at your impartial verdict as
15:24:39 8 to guilt or innocence.

15:25:20 9 The term "knowingly" as that term is used in
15:25:23 10 these instructions means that an act was done
15:25:26 11 voluntarily and intentionally and not because of mistake
15:25:31 12 or accident.

15:25:38 13 The indictment, or formal charge against the
15:25:41 14 defendant, is not evidence of guilt. The defendant is
15:25:44 15 presumed by the law to be innocent. The law does not
15:25:47 16 require a defendant to prove his innocence or to produce
15:25:50 17 any evidence at all. The Government has the burden of
15:25:54 18 proving a person guilty beyond a reasonable doubt, and
15:25:57 19 if it fails to do so, you must find the person not
15:26:00 20 guilty. Thus while the Government's burden of proof is
15:26:04 21 a strict or heavy burden, it is not necessary that a
15:26:07 22 defendant's guilt be proved beyond all possible doubt.
15:26:12 23 What is required is that the Government's proof exclude
15:26:16 24 any reasonable doubt concerning a defendant's guilt. If
15:26:20 25 you are convinced that the defendant has been proved

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15:26:22 1 guilty beyond a reasonable doubt, then it would be your
15:26:25 2 duty to say that. If you are not so convinced, it would
15:26:29 3 be your duty to say so.

15:26:53 4 The law does not require the prosecution to
15:26:56 5 call as witnesses all persons who may have been present
15:27:00 6 at any time or place involved in the case or who may
15:27:04 7 appear to have some knowledge of the matters in issue at
15:27:07 8 this trial. Nor does the law require the prosecution to
15:27:11 9 produce as exhibits all papers and things mentioned in
15:27:15 10 the evidence.

15:27:16 11 In judging the credibility of the witnesses
15:27:18 12 who have testified and in considering the weight and
15:27:22 13 effect of all the evidence that has been produced, you
15:27:26 14 as the jury may consider the prosecution's failure to
15:27:29 15 call other witnesses or to produce other evidence shown
15:27:33 16 by the evidence in the case to be in existence and
15:27:37 17 available. The jury will always bear in mind that the
15:27:40 18 law never imposes upon a defendant in a criminal case
15:27:44 19 the burden or duty of calling any witnesses or producing
15:27:48 20 any evidence and no adverse inference may be drawn from
15:27:53 21 the defendant's failure to do so.

15:28:05 22 You have heard testimony of law enforcement
15:28:08 23 officials. The fact that a witness may be employed by a
15:28:12 24 federal or state government as a law enforcement
15:28:14 25 official does not mean that that person's testimony is

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15:28:18 1 necessarily deserving of more or of less consideration
15:28:23 2 or greater or lesser weight than that of any ordinary
15:28:27 3 witness. It's quite legitimate for defense counsel to
15:28:31 4 try to challenge the credibility of a law enforcement
15:28:34 5 witness on the grounds that their testimony may be
15:28:38 6 affected by personal or professional interest in the
15:28:41 7 outcome of the case. It is your -- it is your decision
15:28:45 8 after reviewing all of the evidence whether to accept
15:28:47 9 the testimony of law enforcement witnesses and to give
15:28:51 10 that testimony whatever weight, if any, that you find it
15:28:55 11 deserves.

15:30:35 12 The indictment charges the defendant with
15:30:36 13 knowingly making a false statement that was intended to
15:30:40 14 deceive the dealer about the lawfulness of the purchase
15:30:45 15 of a firearm that the defendant was making. You'll have
15:30:50 16 a copy of the indictment to read with you in the jury
15:30:54 17 room.

15:30:59 18 In order to prove the defendant guilty of
15:31:01 19 the offense charged in the indictment, the Government
15:31:04 20 must prove beyond a reasonable doubt the following four
15:31:08 21 elements:

15:31:08 22 First, that on or about the date set forth
15:31:11 23 in the indictment in connection with the acquisition of
15:31:14 24 a firearm from a licensed dealer, the defendant made a
15:31:17 25 written statement as evidenced by Bureau of Alcohol,

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15:31:24 1 Tobacco, Firearms Form 4473.

15:31:27 2 Second, that the statement was false or
15:31:31 3 fictitious.

15:31:31 4 Third, that the defendant knew such
15:31:34 5 statement to be false.

15:31:35 6 And fourth, that the false statement was
15:31:38 7 intended or likely to deceive the dealer with respect to
15:31:41 8 any fact material to the lawfulness of the sale of a
15:31:44 9 firearm.

15:31:48 10 The first element the Government must prove
15:31:50 11 beyond a reasonable doubt is that in connection with the
15:31:52 12 acquisition of a firearm from a licensed dealer, the
15:31:56 13 defendant made a statement that he had not previously --
15:32:01 14 he had not been previously convicted of a felony or that
15:32:05 15 he had not been adjudged mentally defective. In order
15:32:11 16 for the Government to satisfy this element, it must show
15:32:14 17 that the defendant made the statement in question to a
15:32:18 18 licensed dealer and that it was made in connection with
15:32:21 19 the acquisition of a firearm. The term "acquisition of
15:32:25 20 a firearm" encompasses all acts and relates to the
15:32:29 21 purchase and sale of a firearm.

15:32:32 22 If you find the defendant intended that
15:32:34 23 after the transaction was completed he would be in
15:32:37 24 control of and have possession of and would be in a
15:32:41 25 position to dispose of a firearm, then the transaction

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15:32:46 1 was in connection with the acquisition of a firearm
15:32:50 2 within the meaning of the statute.

15:32:51 3 The second element the Government must prove
15:32:54 4 beyond a reasonable doubt is that the defendant's
15:32:55 5 statement that he had no prior felony conviction was
15:33:02 6 actually false. If you are satisfied that the statement
15:33:06 7 in question was true or if you have a reasonable doubt
15:33:10 8 that it was false, then it would be your duty to acquit.
15:33:14 9 If you are satisfied that the statement was false, you
15:33:17 10 must consider the remaining elements of the crime.

15:33:25 11 The third element that the Government must
15:33:27 12 prove beyond a reasonable doubt is that the defendant
15:33:29 13 knowingly made the statement that the Government has
15:33:34 14 proved to be actually false. An act is done knowingly
15:33:38 15 if it's done voluntarily and purposely and not because
15:33:41 16 of mistake, accident, negligence, or other innocent
15:33:44 17 reason.

15:33:52 18 The fourth element that the Government must
15:33:54 19 prove beyond a reasonable doubt is that the statement
15:33:57 20 was intended or likely to deceive the dealer with
15:34:00 21 respect to a fact material to the lawfulness of the
15:34:05 22 sale. Under this fourth element, the Government must
15:34:08 23 prove that a false statement with respect to a fact
15:34:11 24 material to the lawfulness of the purchase of the
15:34:14 25 firearm was either intended to deceive the seller or was

15:34:18 1 likely to deceive the seller. It is the purchaser's
15:34:22 2 purpose, the intent with which he acted or the
15:34:29 3 likelihood that the alleged misrepresentation would
15:34:32 4 deceive the seller, that you are called upon to decide.

15:34:59 5 The defendant in a criminal case has the
15:35:00 6 absolute right under the Constitution not to testify.
15:35:03 7 The fact that the defendant did not testify must not be
15:35:07 8 discussed or considered in any way when deliberating and
15:35:11 9 in arriving at your verdict. No inference of any kind
15:35:14 10 may be drawn from the fact that a defendant decided to
15:35:17 11 exercise his privilege under the Constitution and did
15:35:20 12 not testify. As stated before, the law never imposes
15:35:25 13 upon a defendant in a criminal case the burden or duty
15:35:27 14 of calling any witnesses or producing any evidence.

15:35:54 15 Upon retiring to your jury room, select one
15:35:58 16 of your number to be the foreperson of your jury. That
15:36:01 17 person will preside over your deliberations and will be
15:36:03 18 your spokesperson here in court. Your verdict must
15:36:08 19 represent the collective judgment of the jury. To
15:36:12 20 return a verdict, it's necessary that each juror agree
15:36:15 21 to it. Your verdict must be unanimous, in other words.
15:36:19 22 It's your duty as jurors to consult with each other and
15:36:23 23 to deliberate with one another with a view toward
15:36:26 24 reaching an agreement if you can do so without
15:36:29 25 compromise to your individual judgment. Each of you

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15:36:32 1 must decide the case for himself or herself, but you're
15:36:37 2 to do so only after an impartial consideration of the
15:36:40 3 evidence in the case with your fellow jurors.

15:36:43 4 During your deliberations, you're permitted
15:36:47 5 to reexamine your own views and change your opinion if
15:36:50 6 you are convinced it is in error. However, you are not
15:36:55 7 required to surrender your honest conviction solely
15:36:59 8 because of the opinion of a fellow juror or for the mere
15:37:02 9 purpose of thereby being able to return a unanimous
15:37:04 10 verdict. Remember, ladies and gentlemen, at all times
15:37:08 11 that you are not partisans. You are judges. You are
15:37:12 12 the judge of the facts in this case. Your sole interest
15:37:16 13 is to seek the truth from the evidence received during
15:37:19 14 the trial.

15:37:30 15 The indictment will be with you in the jury
15:37:33 16 room and then the verdict form. And when you reach a
15:37:37 17 decision, you will write in either the word "guilty" or
15:37:40 18 the words "not guilty" as to Count 1 of the indictment.
15:37:45 19 Have the foreperson sign it and date it, and that will
15:37:47 20 be your verdict.

15:37:51 21 I'll see the lawyers up here now.

15:37:51 22 (The following proceedings were held at the
15:38:10 23 bench:)

15:38:10 24 THE COURT: Any objection?

15:38:12 25 MR. CHAMPAIGN: A couple of things I wanted

15:38:14 1 to add. I don't think you did conjunctive. Read that
15:38:23 2 instruction that will be disjunctive.

15:38:25 3 MS. SHEA: Are you talking about for the
15:38:26 4 fourth element?

15:38:27 5 MR. CHAMPAIGN: For the actual jury
15:38:29 6 instruction. We had that before we got to the elements.
15:38:32 7 I believe it was 26. But that would be an instruction
15:38:43 8 that I would like to be read.

15:38:44 9 THE COURT: Denied.

15:38:45 10 MR. CHAMPAIGN: Denied?

15:38:46 11 THE COURT: Denied.

15:38:47 12 Any other objections?

15:38:49 13 MR. CHAMPAIGN: I don't know if you're going
15:38:50 14 to raise this or not. I did hear, like, mental
15:38:53 15 defective come up when he was reading the indictment.

15:38:55 16 MS. SHEA: Yeah, but I don't want to revisit
15:38:57 17 it.

15:38:58 18 There was -- there was one point where you
15:39:04 19 said mental defective, but I don't want to revisit it.

15:39:07 20 THE COURT: That's because you had it in
15:39:10 21 your instruction. It went in the final charge.

15:39:14 22 MS SHEA: Yeah, that's fine.

15:39:16 23 We wanted to make sure the redacted
15:39:19 24 indictment was going back.

15:39:20 25 THE COURT: All right. Thank you.

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15:39:36 1 (The proceedings resumed in open court:)

15:39:36 2 THE COURT: Ms. Ruether, you won't need to

15:39:38 3 go into the jury room because we have 12 jurors to

15:39:41 4 deliberate.

15:39:41 5 Ladies and gentlemen, I'll let you go to

15:39:45 6 work now and begin your deliberations on the case. And

15:39:49 7 Court will be in recess awaiting your return of the

15:39:52 8 verdict.

15:39:57 9 (A recess is taken at 3:39 p.m.)

16:56:00 10 (Court is called to order at 4:56 p.m.)

16:56:06 11 (The defendant is present.)

16:56:20 12 THE COURT: The jurors are concerned about

16:56:21 13 traveling long distances at night. Some of them come

16:56:25 14 from 75, 80 miles distance. So at five o'clock, I'm

16:56:29 15 going to release them for the evening.

16:56:34 16 Do you want to bring the jury back in.

16:58:14 17 (The jury enters the courtroom at 4:58 p.m.)

16:58:38 18 THE COURT: I thought I would let you know

16:58:40 19 that we're going to recess at five o'clock. And some of

16:58:45 20 you have traveled from long distances and have an hour,

16:58:48 21 hour and a half on the road ahead of you, so I want to

16:58:52 22 be considerate of that. Can you get back here tomorrow

16:58:56 23 at ten o'clock? And we'll resume your deliberations.

16:59:01 24 And I need to instruct you not to talk with

16:59:05 25 anyone about the case or about the deliberations and to

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16:59:11 1 not read or inquire anything about the case on your own.
16:59:15 2 You have to act collectively when you're a jury. You're
16:59:20 3 one unit with 12 people. You're one unit, 12 people.
16:59:24 4 That's your charge. So you have to do things together.
16:59:28 5 You can't discuss the case with anyone else or allow
16:59:32 6 anyone to discuss it with you when you're acting
16:59:35 7 together. So I know you know that, but I just wanted to
16:59:39 8 repeat it.

16:59:40 9 So have a safe trip home and we'll resume at
16:59:43 10 ten o'clock tomorrow morning.

16:59:46 11 JUROR: Can we get a hotel?

16:59:46 12 THE COURT: Ma'am?

16:59:47 13 JUROR: Will they pay for our hotel?

16:59:49 14 THE COURT: Yeah, I think if --

16:59:51 15 JUROR: How do I do that?

16:59:53 16 THE CLERK: We --

16:59:54 17 THE COURT: You're going to take care of
16:59:55 18 that?

16:59:55 19 Anybody that needs information and
16:59:59 20 processing, the clerk will take care of it. Thank you
17:00:02 21 for bringing that up.

17:00:05 22 Court will be in recess.

17:00:16 23 (A recess is taken at 5:00 p.m.)

17:00:16 24 * * * END OF DAY 1 * * *

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