

11:18:47 1 "knowingly", you may consider evidence about what the
11:18:47 2 defendant said, what the defendant did, and failed to do,
11:18:47 3 how the defendant acted, and all the other facts and
11:18:47 4 circumstances shown by the evidence that may prove what was
11:18:47 5 in the defendant's mind at the time.

11:18:47 6 Count Three. Count Three charges the defendant,
11:18:47 7 knowing that he was an unlawful user of a controlled
11:18:47 8 substance, or addicted to a controlled substance, did
11:18:47 9 knowingly possess a firearm in violation of Title 18, United
11:18:47 10 States Code, Section 922(g) (3).

11:18:47 11 To find the defendant guilty of this offense,
11:18:47 12 you must find that the government proved each of the
11:18:47 13 following four elements beyond a reasonable doubt".

11:18:47 14 First. The defendant was an unlawful user of a
11:18:47 15 controlled substance or addicted to a controlled substance;

11:18:47 16 Second, the defendant knowingly possessed a
11:18:47 17 firearm, that is a Colt Cobra 38 SPL revolver with Serial
11:18:47 18 Number RA551363, while he was an unlawful user of a
11:18:48 19 controlled substance or addicted to a controlled substance;

11:18:48 20 Third. At the time the defendant knowingly
11:18:48 21 possessed the firearm, he knew he was an unlawful user of a
11:18:48 22 controlled substance or addicted to a controlled substance.

11:18:48 23 And fourth. The firearm was transported across
11:18:48 24 a state line at some time during or before the defendant's
11:18:48 25 possession of it.

11:18:48 1 The term "firearm" has the same definition as
11:18:48 2 previously provided that these instructions.

11:18:48 3 You are instructed that crack cocaine, commonly
11:18:48 4 referred to as crack, is a controlled substance.

11:18:48 5 You are also instructed that as to the fourth
11:18:48 6 element, that the "firearm was transported across a state
11:18:48 7 line at some time during or before the defendant's
11:18:48 8 possession of it." The parties have agreed that the Colt
11:18:48 9 Cobra 38 SPL revolver with Serial RA551363 traveled in
11:18:48 10 interstate commerce, and that this element is met. You
11:18:48 11 should therefore treat this fact as having been proved, but
11:18:48 12 you are not required to do so, because you are the sole
11:18:48 13 judge of the facts.

11:18:48 14 The phrase "unlawful user of a controlled
11:18:48 15 substance" means a person who uses a controlled substance in
11:18:48 16 a manner other than as prescribed by a licensed physician.
11:18:48 17 The defendant must have been actively engaged in use of a
11:18:48 18 controlled substance or controlled substances during the
11:18:48 19 time he possessed the firearm, but the law does not require
11:18:50 20 that he used the controlled substances or -- controlled
11:18:54 21 substance or controlled substances at the precise time he
11:18:58 22 possessed the firearm. Such use is not limited to the use
11:19:01 23 of drugs on a particular day, or within a matter of days or
11:19:05 24 weeks before, but rather that the unlawful use has occurred
11:19:08 25 recently enough to indicate that the individual is actively

11:19:12 1 engaged in such conduct.

11:19:14 2 An inference that a person was a user of a
11:19:18 3 controlled substance may be drawn from evidence of a pattern
11:19:21 4 of use or possession of a controlled substance that
11:19:25 5 reasonably covers the time that the firearm was possessed.

11:19:27 6 The term "addict" means any individual who
11:19:32 7 habitually uses any controlled substance so as to endanger
11:19:33 8 the public morals, health, safety, or welfare, or who is so
11:19:36 9 far addicted to the use of the controlled substance as to
11:19:39 10 have lost the power of self control with reference to his
11:19:43 11 addiction.

11:19:44 12 Knowing possession. To establish the second
11:19:49 13 element of Count Three, the government must prove that the
11:19:52 14 defendant possessed the firearm in question. To "possess"
11:19:54 15 means to have something within a person's control. The
11:19:57 16 government does not have to prove that the defendant
11:19:59 17 physically held the firearm, that is, he had actual
11:20:03 18 possession of it. As long as the firearm was within the
11:20:06 19 defendant's control, he possessed it. If you find that the
11:20:10 20 defendant either had actual possession of the firearm or had
11:20:14 21 power and intention to exercise control over it, even though
11:20:18 22 it was not in the defendant's physical possession, that is,
11:20:20 23 that the defendant had the ability to take actual possession
11:20:24 24 of the object when the defendant wanted to do so, you may
11:20:28 25 find that the government has proven possession.