

**Proposed revisions to Seventh Circuit Criminal Jury Instructions
regarding 18 U.S.C. § 924(c) offenses**

These proposed revised criminal civil jury instructions for the Seventh Circuit are offered for public comment by the Seventh Circuit Criminal Jury Instruction Committee. The proposed revisions concern the instructions for offenses under 18 U.S.C. § 924(c).

Each proposed revised instruction is marked "PROPOSED REVISION" and bears in the title a short notation indicating whether the proposed revision involves the instruction, the committee comment, or both. Each proposed revised instructions is followed by, where applicable, the current version of the instruction, marked "CURRENT INSTRUCTION."

The committee, which includes judges, prosecutors, defense attorneys, and law professors, welcomes comment before submission of the proposed revisions to the Circuit Council for approval and promulgation. Comments should be emailed to the Committee's Reporter, Professor J. Steven Beckett of the University of Illinois College of Law, at jicomments@illinois.edu, with a subject line of "Pattern Jury Instruction Comment." Comments will be accepted through March 27, 2017.

(PROPOSED REVISION – CHANGE TO COMMENT ONLY)
18 U.S.C. § 924(c)(1)(A) USING OR CARRYING A FIREARM
DURING AND IN RELATION TO A CRIME OF VIOLENCE
OR DRUG TRAFFICKING CRIME – ELEMENTS

[The indictment charges the defendant[s] with; Count[s] __ of the indictment charge[s] the defendant[s] with] [using; carrying] a firearm during and in relation to a [crime of violence; drug trafficking crime]. In order for you to find [a; the] defendant guilty of this charge, the government must prove both of the following elements beyond a reasonable doubt:

1. The defendant committed the crime of [name the specific crime of violence or drug trafficking crime]; and
2. The defendant knowingly [used; carried] a firearm during and in relation to such crime.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt [as to the charge you are considering], then you should find the defendant guilty [of that charge].

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt [as to the charge you are considering], then you should find the defendant not guilty [of that charge].

Committee Comment

The terms “drug trafficking crime” and “crime of violence” are both defined by statute, 18 U.S.C. § 924(c)(2) and (3), respectively. Whether a particular crime qualifies as such is a determination for the court; accordingly, the Committee recommends that neither term be defined for the jury. Instead, the bracketed portion of the first element of this instruction should list the name of the “drug trafficking crime” or “crime of violence” alleged in the indictment, as determined qualified as such by the court.

The term “knowingly” is defined in the Pattern Instruction 4.10.

If the indictment alleged the firearm was “brandished” or “discharged,” facts which increase the mandatory minimum penalties under §924(c), those questions must be submitted to the jury. *Alleyne v. United States*, 133 S.Ct. 2151 (2013). A special verdict instruction is included *infra*.

There is no requirement that the gun be operable to be a “firearm” under 18 U.S.C. § 924(c). See *United States v. Castillo*, 406 F.3d 806, 817 (7th Cir. 2005), *vacated on other grounds*, *Castillo v. United States*, 552 U.S. 1137 (2008).

(CURRENT INSTRUCTION)
**18 U.S.C. § 924(c)(1)(A) USING OR CARRYING A FIREARM
DURING AND IN RELATION TO A CRIME OF VIOLENCE
OR DRUG TRAFFICKING CRIME – ELEMENTS**

[The indictment charges the defendant[s] with; Count[s] of the indictment charge[s] the defendant[s] with] [using; carrying] a firearm during and in relation to a [crime of violence; drug trafficking crime]. In order for you to find [a; the] defendant guilty of this charge, the government must prove both of the following elements beyond a reasonable doubt:

1. The defendant committed the crime of [name the specific crime of violence or drug trafficking crime alleged in the indictment] as charged in Count of the indictment; and

2. He knowingly [used; carried] a firearm during and in relation to such crime.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt [as to the charge you are considering], then you should find the defendant guilty [of that charge].

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt [as to the charge you are considering], then you should find the defendant not guilty [of that charge].

Committee Comment

The terms “drug trafficking crime” and “crime of violence” are both defined by statute, 18 U.S.C. § 924(c)(2) and (3), respectively. Whether a particular crime qualifies as such is a determination for the court; accordingly, the Committee recommends that neither term be defined for the jury. Instead, the bracketed portion of the first element of this instruction should list the name of the “drug trafficking crime” or “crime of violence” alleged in the indictment, as determined qualified as such by the court.

The term “knowingly” is defined in the Pattern Instruction 4.10.

Whether a firearm is “brandished” or “discharged” is not an element of the offense to be determined by the jury (as it affects the mandatory minimum, not the mandatory maximum sentence) and may instead be determined by a judge using the preponderance of the evidence standard. See *United States v. Watts*, 256 F.3d 630, 634–35 (7th Cir. 2001).

There is no requirement that the gun be operable to be a “firearm” under 18 U.S.C. § 924(c). See *United States v. Castillo*, 406 F.3d 806, 817 (7th Cir. 005), *vacated on other grounds*, *Castillo v. United States*, 552 U.S. 1137 (2008).

(PROPOSED NEW INSTRUCTION)
BRANDISH/DISCHARGE SPECIAL VERDICT INSTRUCTIONS

If you find the defendant guilty of the offense charged in [Count ___ of] the indictment, you must then determine whether the government has proven beyond a reasonable doubt that the firearm was [brandished; discharged].

[To “brandish” a firearm means to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.]

You will see on the verdict form a question about this issue. You should consider this question only if you have found that the government has proven the defendant guilty of the offense charged in [Count ___ of] the indictment.

If you find that the government has proven beyond a reasonable doubt that the defendant [brandished; discharged] the firearm, then you should answer the question “Yes.” If you find that the government has not proven beyond a reasonable doubt that the defendant [brandished; discharged] the firearm, then you should answer the question “No.”

Committee Comment

The term “brandish” is defined in 18 U.S.C. § 924(c)(4).

The question of whether the firearm was brandished or discharged must be determined by the jury in order for the enhanced mandatory minimum penalties to apply. See *Alleyne v. United States*, 133 S. Ct. 2151 (2013), in which the Supreme Court overruled *Harris v. United States*, 536 U.S. 545, and held that any fact that increases a mandatory minimum sentence is an “element” of the crime, not a “sentencing factor” that must be submitted to the jury.

See also *Dean v. United States*, 556 U.S. 568 (2009), in which the Supreme Court held that the “discharge” requirement in § 924(c) contains no *mens rea* requirement, and thus applies to both intentional and accidental firings of the gun.

The Committee chose not to suggest a definition of the term “discharge” both because the meaning is self-evident, and because there is no relevant Seventh Circuit precedent. However, if there were a dispute about whether a firearm was discharged in a given case, the court may wish to define the term.

(PROPOSED REVISION – CHANGES TO INSTRUCTION AND COMMENT)
**18 U.S.C. § 924(c)(1)(A) USING OR CARRYING A FIREARM DURING
AND IN RELATION TO A CRIME OF VIOLENCE OR DRUG TRAFFICKING
CRIME – ACCOUNTABILITY THEORY ELEMENTS**

A defendant [aids; counsels; commands; induces; procures] the commission of the offense only if he knowingly and intentionally assists another's [use; carrying] of a firearm during and in relation to a [crime of violence; drug trafficking crime]. This requires the government to prove the following beyond a reasonable doubt:

1. The defendant had advance knowledge of another person's [use; carrying] of a firearm during and in relation to a [crime of violence; drug trafficking crime]; and

2. The defendant, having such knowledge, intentionally facilitated the [use; carrying] of the firearm during and in relation to the [crime of violence; drug trafficking crime].

If you find from your consideration of all the evidence that the government proved both of these elements beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that the government failed to prove either of these elements beyond a reasonable doubt, then you should find the defendant not guilty.

Committee Comment

This instruction is based on *United States v. Moore*, 572 F.3d 334, 341 (7th Cir. 2009). See also, *United States v. Andrews*, 442 F.3d 996, 1002 (7th Cir. 2006); *United States v. Daniels*, 370 F.3d 689, 691 (7th Cir. 2004); *United States v. Taylor*, 226 F.3d 593, 596–97 (7th Cir. 2000); *United States v. Woods*, 148 F.3d 843 (7th Cir. 1998). This instruction should be given in addition to the standard aiding and abetting instruction, Pattern Instruction 5.06(a). See also *Rosemond v. United States*, 134 S. Ct. 1240 (2014), in which the Supreme Court addressed accessory liability in a 924(c)(1)(A) case. In *Rosemond*, the Court stated: "active participation in the drug sale is sufficient for section 924(c) liability (even if the conduct does not extend to the firearm), so long as the defendant had prior knowledge of the gun's involvement." *Id.* at 1251 (emphasis added).

(CURRENT INSTRUCTION)

**18 U.S.C. § 924(c)(1)(A) USING OR CARRYING A FIREARM DURING
AND IN RELATION TO A CRIME OF VIOLENCE OR DRUG TRAFFICKING
CRIME – ACCOUNTABILITY THEORY ELEMENTS**

A defendant [aids; counsels; commands; induces; procures] the commission of the offense only if he knowingly and intentionally assists another's [use; carrying] of a firearm during and in relation to a [crime of violence; drug trafficking crime]. This requires the government to prove the following beyond a reasonable doubt:

1. The defendant knew, either before or during the crime, of another person's [use; carrying] of a firearm; and,
2. The defendant intentionally facilitated the [use; carrying] of the firearm once so informed.

A person who merely aids the underlying offense knowing that a firearm would be [used; carried] does not [aid, counsel; command; induce; procure] the commission of the offense charged in Count [].

If you find from your consideration of all the evidence that the government proved both of these elements beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that the government failed to prove either of these elements beyond a reasonable doubt, then you should find the defendant not guilty.

Committee Comment

This instruction is based on *United States v. Moore*, 572 F.3d 334, 341 (7th Cir. 2009); *United States v. Andrews*, 442 F.3d 996, 1002 (7th Cir. 2006); *United States v. Daniels*, 370 F.3d 689, 691 (7th Cir. 2004); and *United States v. Taylor*, 226 F.3d 593, 596–97 (7th Cir. 2000). It should be given in addition to the standard aiding and abetting instruction, Pattern Instruction 5.06(a).

(PROPOSED REVISION – CHANGE TO COMMENT ONLY)
**18 U.S.C. § 924(c)(1)(A) POSSESSION OF A FIREARM IN
FURTHERANCE OF A CRIME OF VIOLENCE OR
DRUG TRAFFICKING CRIME – ELEMENTS**

[The indictment charges the defendant[s] with; Count[s] __ of the indictment charge[s] the defendant[s] with] possession of a firearm in furtherance of a [crime of violence; drug trafficking crime]. In order for you to find [a; the] defendant guilty of this charge, the government must prove each of the [three] following elements beyond a reasonable doubt:

1. The defendant committed the crime of [name specific crime of violence or drug trafficking crime]; and
2. The defendant knowingly possessed a firearm; and
3. The defendant’s possession of the firearm was in furtherance of the [name specific crime of violence or drug trafficking crime].

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt [as to the charge you are considering], then you should find the defendant guilty [of that charge].

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt [as to the charge you are considering], then you should find the defendant not guilty [of that charge].

Committee Comment

The terms “drug trafficking crime” and “crime of violence” are both defined by statute, 18 U.S.C. § 924(c)(2) and (3), respectively. Whether a particular crime qualifies as such is a determination for the court to make; accordingly, the Committee recommends that neither term be defined for the jury. Instead, the bracketed portion of the first element of this instruction should list the name of the “drug trafficking crime” or “crime of violence” alleged in the indictment, as determined qualified as such by the court.

The term “knowingly” is defined in Pattern Instruction 4.10. The term “possession” is defined in Pattern Instruction 4.13.

There is no requirement that the gun be operable to be a “firearm” under 18 U.S.C. § 924(c). See *United States v. Castillo*, 406 F.3d 806, 817 (7th Cir. 2005), *vacated on other grounds*, *Castillo v. United States*, 552 U.S. 1137 (2008).

The Committee recommends that courts instruct jurors on the meaning of “in furtherance of” a crime of violence or drug trafficking crime. The Seventh

Circuit has recognized a non-exhaustive list of factors developed by the Fifth Circuit, for use in the determining whether a firearm was possessed “in furtherance of” another crime. The list includes: “the type of drug activity that is being conducted, accessibility of the firearm, the type of the weapon, whether the weapon is stolen, the status of the possession (legitimate or illegal), whether the gun is loaded, proximity to drugs or drug profits, and the time and circumstances under which the gun is found.” *Castillo*, 406 F.3d at 815 (internal citations omitted); see also *United States v. Seymour*, 519 F.3d 700, 715 (7th Cir. 2008) (applying factors). The Seventh Circuit has advised that “given the fact intensive nature of the ‘in furtherance of’ inquiry, the weight, if any, these and other factors should be accorded necessarily will vary from case to case.” *Castillo*, 406 F.3d at 815. Courts should craft an instruction addressing the relevant factors based on the evidence in the case on trial.

(CURRENT INSTRUCTION)
**18 U.S.C. § 924(c)(1)(A) POSSESSION OF A FIREARM IN
FURTHERANCE OF A CRIME OF VIOLENCE OR
DRUG TRAFFICKING CRIME – ELEMENTS**

[The indictment charges the defendant[s] with; Count[s] of the indictment charge[s] the defendant[s] with] possession of a firearm in furtherance of a [crime of violence; drug trafficking crime]. In order for you to find [a; the] defendant guilty of this charge, the government must prove each of the [three] following elements beyond a reasonable doubt:

1. The defendant committed the crime of [name specific crime of violence or drug trafficking crime alleged in the indictment] as charged in Count [] of the indictment; and
2. He knowingly possessed a firearm; and
3. His possession of the firearm was in furtherance of the [name specific crime of violence or drug trafficking crime alleged in the indictment].

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt [as to the charge you are considering], then you should find the defendant guilty [of that charge].

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt [as to the charge you are considering], then you should find the defendant not guilty [of that charge].

Committee Note

The terms “drug trafficking crime” and “crime of violence” are both defined by statute, 18 U.S.C. § 924(c)(2) and (3), respectively. Whether a particular crime qualifies as such is a determination for the court to make; accordingly, the Committee recommends that neither term be defined for the jury. Instead, the bracketed portion of the first element of this instruction should list the name of the “drug trafficking crime” or “crime of violence” alleged in the indictment, as determined qualified as such by the court.

The term “knowingly” is defined in the Pattern Instruction 4.10.

There is no requirement that the gun be operable to be a “firearm” under 18 U.S.C. § 924(c). See *United States v. Castillo*, 406 F.3d 806, 817 (7th Cir. 2005), *vacated on other grounds*, *Castillo v. United States*, 552 U.S. 1137 (2008).

Whether a firearm is “brandished” or “discharged” is not an element of the offense to be determined by the jury (as it affects the mandatory minimum, not

the mandatory maximum sentence) and may instead be determined by a judge using the preponderance-of-the-evidence standard. See *United States v. Watts*, 256 F.3d 630, 634–35 (7th Cir. 2001).

The Committee recommends that courts instruct jurors on the meaning of “in furtherance of” a crime of violence or drug trafficking crime. The Seventh Circuit has recognized a non-exhaustive list of factors developed by the Fifth Circuit, for use in the determining whether a firearm was possessed “in furtherance of” another crime. The list includes: “the type of drug activity that is being conducted, accessibility of the firearm, the type of the weapon, whether the weapon is stolen, the status of the possession (legitimate or illegal), whether the gun is loaded, proximity to drugs or drug profits, and the time and circumstances under which the gun is found.” *Castillo*, 406 F.3d at 815 (internal citations omitted); see also *United States v. Seymour*, 519 F.3d 700, 715 (7th Cir. 2008) (applying factors). The Seventh Circuit has advised that “given the fact intensive nature of the ‘in furtherance of’ inquiry, the weight, if any, these and other factors should be accorded necessarily will vary from case to case.” *Castillo*, 406 F.3d at 815. Courts should craft an instruction addressing the relevant factors based on the evidence in the case on trial.

(PROPOSED REVISION – CHANGE TO INSTRUCTION AND COMMENT)
**18 U.S.C. § 924(c)(1)(A) POSSESSION OF A FIREARM IN
FURTHERANCE OF A CRIME OF VIOLENCE OR DRUG TRAFFICKING
CRIME – ACCOUNTABILITY THEORY ELEMENTS**

A defendant [aids; counsels; commands; induces; procures] the commission of the offense only if he knowingly and intentionally assists another's possession of a firearm in furtherance of a [crime of violence; drug trafficking crime]. This requires the government to prove the following beyond a reasonable doubt:

1. The defendant had advance knowledge of another person's possession of a firearm in furtherance of [a crime of violence; drug trafficking crime]; and,
2. The defendant, having such knowledge, intentionally facilitated the possession of the firearm in furtherance of the [crime of violence; drug trafficking crime].

If you find from your consideration of all the evidence that the government proved both of these elements beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that the government failed to prove either of these elements beyond a reasonable doubt, then you should find the defendant not guilty.

Committee Comment

This instruction is based on *Rosemond v. United States*, 134 S. Ct. 1240 (2014). This instruction should be given in addition to the standard aiding and abetting instruction, Pattern Instruction 5.06(a).

(CURRENT INSTRUCTION)

**18 U.S.C. § 924(c)(1)(A) POSSESSION OF A FIREARM IN
FURTHERANCE OF A CRIME OF VIOLENCE OR DRUG TRAFFICKING
CRIME – ACCOUNTABILITY THEORY ELEMENTS**

A defendant [aids; counsels; commands; induces; procures] the commission of the offense only if he knowingly and intentionally assists another's possession of a firearm in furtherance of a [crime of violence; drug trafficking crime]. This requires the government to prove the following beyond a reasonable doubt:

1. The defendant knew, either before or during the crime, of another person's possession of a firearm in furtherance of the crime; and,
2. The defendant intentionally facilitated that possession once so informed.

A person who merely aids the underlying offense knowing that a firearm would be possessed by another in furtherance of the crime does not [aid, counsel; command; induce; procure] the commission of the offense[s] charged in Count[s] [].

If you find from your consideration of all the evidence that the government proved both of these elements beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that the government failed to prove either of these elements beyond a reasonable doubt, then you should find the defendant not guilty.

Committee Comment

This instruction is based on *United States v. Moore*, 572 F.3d 334, 341 (7th Cir. 2009); *United States v. Andrews*, 442 F.3d 996, 1002 (7th Cir. 2006); *United States v. Daniels*, 370 F.3d 689, 691 (7th Cir. 2004); and *United States v. Taylor*, 226 F.3d 593, 596–97 (7th Cir. 2000). It should be given in addition to the standard aiding and abetting instruction, Pattern Instruction 5.06(a).

(PROPOSED NEW INSTRUCTION)

18 U.S.C. § 924(c)(1)(A) DEFINITION OF “ADVANCE KNOWLEDGE”

“Advance knowledge” means knowledge at a time the defendant had an opportunity to either attempt to alter the plan or to withdraw from it. It is sufficient if the knowledge is gained in the midst of the underlying crime, as long as the defendant had a realistic opportunity to withdraw but continued to participate in the crime.

Committee Comment

In *Rosemond v. United States*, 134 S. Ct. 1240 (2014), the Supreme Court held that with respect to a charge of aiding and abetting the offense of using a firearm in the commission of a violent crime or drug felony, the government must prove that an unarmed defendant had advance knowledge that his confederate would carry or use a gun. *Rosemond*, 134 S.Ct. at 1249. This means the defendant must have had “knowledge at a time [he] can do something with it – most notably, opt to walk away. *Id.* at 1249-50. A person who knows beforehand that his confederate plans to carry a gun meets this requirement. He can “attempt to alter that plan or, if unsuccessful, withdraw from the enterprise,” but “deciding instead to go ahead with his role in the venture . . . shows his intent to aid an armed offense.” *Id.* By contrast, a defendant who “knows nothing of a gun until it appears at the scene . . . may already have completed his acts of assistance” or “may at that late point have no realistic opportunity to quit the crime.” *Id.* In that case, “the defendant has not shown the requisite intent to assist a crime involving a gun.” *Id.*

The defendant’s advance knowledge does not have to exist before the underlying crime is begun. It is sufficient if the knowledge is gained in the midst of the underlying crime, so long as the defendant continues his or her participation and had a meaningful opportunity to withdraw. *Id.* “[I]f a defendant continues to participate in a crime after a gun was displayed or used by a confederate, the jury can permissibly infer from his failure to object or withdraw that he had such knowledge. In any criminal case, after all, the factfinder can draw inferences about a defendant's intent based on all the facts and circumstances of a crime's commission.” *Id.* at 1250 n.9. Advance knowledge contemplates that, regardless of when the defendant learned about the presence of the gun, he chose, with full knowledge of the severity of the crime, to participate in it.

What constitutes “a realistic opportunity to withdraw” is an inherently fact specific inquiry that will vary from case to case and call upon jurors to use their common sense in interpreting the evidence.

(CURRENT INSTRUCTION – NO CHANGE PROPOSED)
18 U.S.C. § 924(c) DEFINITION OF “USE”

“Use” means the active employment of a firearm. The term is not limited to use as a weapon, and includes brandishing, displaying, bartering, striking with, firing, and attempting to fire a firearm. A defendant’s reference to a firearm calculated to bring about a change in the circumstances of the offense constitutes “use” during and in relation to a crime. However, mere possession or storage of a firearm, at or near the site of the crime, drug proceeds or paraphernalia is not enough to constitute use of that firearm.

Committee Comment

See *Bailey v. United States*, 516 U.S. 137, 148-49 (1995). In *Smith v. United States*, 508 U.S. 223, 241 (1993), the Supreme Court held that a person who trades a gun for drugs “uses” it during and in relation to a drug trafficking offense for purposes of § 924(c)(1). But a person who trades drugs for a gun does not “use” the gun within the meaning of § 924(c)(1)(A). *Watson v. United States*, 552 U.S. 74, 83 (2007). Where the defendant displayed a firearm by placing it on the couch next to him as he was cutting cocaine, he “used” the firearm within the meaning of § 924(c). *Buggs v. United States*, 153 F.3d 439, 444 (7th Cir. 1998).

(PROPOSED NEW INSTRUCTION – SLIGHT CHANGE TO INSTRUCTION)
18 U.S.C. § 924(c) DEFINITION OF “CARRY”

A person “carries” a firearm when he knowingly transports it on his person [or in a vehicle or container].

[A person may “carry” a firearm even when it is not immediately accessible because it is in a container or compartment [such as a glove compartment or trunk of a car], even if locked.]

Committee Comment

Muscarello v. United States, 524 U.S. 125, 126–27, 137 (1998). The term “carry” requires a connotation of transportation that occurred during or in relation to the predicate crime. See *Stanback v. United States*, 113 F.3d 651, 657–58 (7th Cir. 1997). “Carrying” a firearm from one room to another is sufficient. See *Buggs v. United States*, 153 F.3d 439, 444 (7th Cir. 1998).

The bracketed language should be used only if supported by evidence in the case on trial.

(CURRENT INSTRUCTION)
18 U.S.C. § 924(c) DEFINITION OF “CARRY”

A person “carries” a firearm when he knowingly transports it on his person [or in a vehicle or container].

[A person may “carry” a firearm even when it is not immediately accessible because it is in a case or compartment [such as a glove compartment or trunk of a car], even if locked.]

Committee Comment

Muscarello v. United States, 524 U.S. 125, 126–27, 137 (1998). The term “carry” requires a connotation of transportation that occurred during or in relation to the predicate crime. See *Stanback v. United States*, 113 F.3d 651, 657–58 (7th Cir. 1997). “Carrying” a firearm from one room to another is sufficient. See *Buggs v. United States*, 153 F.3d 439, 444 (7th Cir. 1998).

The bracketed language should be used only if supported by evidence in the case on trial.

(CURRENT INSTRUCTION – NO CHANGE PROPOSED)
18 U.S.C. § 924(c) DEFINITION OF “DURING”

“During” means at any point within the offense conduct charged in Count [] of the indictment.

Committee Comment

The Seventh Circuit has stated that the terms “during” and “in relation to” have separate meanings under § 924(c)(1)(A). *United States v. Young*, 316 F.3d 649, 662 (7th Cir. 2002).

(CURRENT INSTRUCTION – NO CHANGE PROPOSED)
18 U.S.C. § 924(c) DEFINITION OF “IN RELATION TO”

A person [uses; carries] a firearm “in relation to” a crime if there is a connection between the use or carrying of the firearm and the crime of violence or drug trafficking crime. The firearm must have some purpose or effect with respect to the crime; its presence or involvement cannot be the result of accident or coincidence. The firearm must at least facilitate, or have the potential of facilitating, the crime.

Committee Comment

See *Smith v. United States*, 508 U.S. 223, 238 (1993); *United States v. Mancillas*, 183 F.3d 682, 707 (7th Cir. 1999).

The Seventh Circuit has stated that the terms “during” and “in relation to” have separate meanings under § 924(c)(1)(A). *United States v. Young*, 316 F.3d 649, 662 (7th Cir. 2002).

(CURRENT INSTRUCTION – NO CHANGE PROPOSED)
18 U.S.C. § 924(c) DEFINITION OF “IN FURTHERANCE OF”

A person possess a firearm “in furtherance of” of a crime if the firearm furthers, advances, moves forward, promotes or facilitates the crime. The mere presence of a firearm at the scene of a crime is insufficient to establish that the firearm was possessed “in furtherance of” the crime. There must be some connection between the firearm and the crime.

Committee Comment

See *United States v. Huddleston*, 593 F.3d 596, 602 (7th Cir. 2010) (“in furtherance of” prong satisfied where jury could have found that defendant possessed gun to protect himself and his stash and his profits); *United States v. Castillo*, 406 F.3d 806, 814–16 (7th Cir. 2005) (holding evidence was sufficient to establish that defendant possessed shotgun “in furtherance of” underlying drug crime where he strategically placed the shotgun near his cache of drugs to protect himself, his drugs, and his drug trafficking business), *vacated on other grounds*, *Castillo v. United States*, 552 U.S. 1137 (2008).

The Seventh Circuit has acknowledged a non-exhaustive list of factors developed by the Fifth Circuit for use in the determining whether a firearm was possessed “in furtherance of” another crime. The list includes “the type of drug activity that is being conducted, accessibility of the firearm, the type of the weapon, whether the weapon is stolen, the status of the possession (legitimate or illegal), whether the gun is loaded, proximity to drugs or drug profits, and the time and circumstances under which the gun is found.” *Castillo*, 406 F.3d at 815 (internal citations omitted); see also *United States v. Seymour*, 519 F.3d 700, 715 (7th Cir. 2008) (applying factors). The Seventh Circuit has advised that “given the fact-intensive nature of the ‘in furtherance of’ inquiry, the weight, if any, these and other factors should be accorded necessarily will vary from case to case.” *Castillo*, 406 F.3d at 815. Courts should craft an instruction addressing the relevant factors based on the evidence in the case on trial.