

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 – POSSESSION OF A FIREARM BY A PROHIBITED
PERSON

For you to find Avery Hawk Wing guilty of “possession of a firearm by a prohibited person” as charged in the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that Avery Hawk Wing had been convicted of a crime punishable by imprisonment for more than one year;

You are instructed that the government and Avery Hawk Wing have agreed that Avery Hawk Wing has been convicted of a crime punishable by imprisonment for more than one year under the laws of the State of South Dakota, and you must consider the first element as proven.

By entering into this agreement or stipulation, Avery Hawk Wing has not admitted his guilt of the offense charged, and you may not draw an inference of guilt from the stipulation. The only effect of this stipulation is to establish the fact that Avery Hawk Wing has been convicted of a crime punishable by imprisonment for a term exceeding one year before on or about September 3, 2024.

Two, after that conviction, Avery Hawk Wing knowingly possessed a firearm, that is a Hi-Point, Model 995, 9mm caliber, semi-automatic rifle, bearing serial number E40271;

As used in this instruction, an act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake, or accident. You may consider evidence of the defendant’s words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly. The government is not required to prove that the defendant knew that his acts or omissions were unlawful.

The term “firearm” means any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

Three, that at the time Avery Hawk Wing knowingly possessed the firearm, he knew that he had previously been convicted of a crime punishable by imprisonment for more than one year;

You are instructed that the government and Avery Hawk Wing have agreed that on or about September 3, 2024, Avery Hawk Wing

knew he had been convicted of a crime punishable by imprisonment for a term exceeding one year.

Avery Hawk Wing has not, by entering into this agreement or stipulation, admitted his guilt of the offense charged, and you may not draw an inference of guilt from the stipulation. The only effect of this stipulation is to establish the fact that on or about September 3, 2024, Avery Hawk Wing knew he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year.

And four, the firearm was transported across a state line at some time during or before Avery Hawk Wing's possession of it.

If you find beyond a reasonable doubt that the firearm in question was manufactured in a state other than South Dakota and that Avery Hawk Wing possessed that firearm in the State of South Dakota, then you may, but are not required to, find that it was transported across a state line.

For you to find Avery Hawk Wing guilty of the offense charged in the Indictment, the government must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find Avery Hawk Wing not guilty of this offense charged in the Indictment.

FINAL INSTRUCTION NO. 3 – POSSESSION

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

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

A person has constructive possession of a firearm if he has dominion over the premises where the firearm is located. Mere physical proximity to a firearm is not enough to show constructive possession, but knowledge of a firearm's presence, combined with control is constructive possession.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" has been used in these instructions it includes actual as well as constructive possession and also sole as well as joint possession.

FINAL INSTRUCTION NO. 4 – INFLUENCING WITNESS

Attempts by a defendant to influence a witness in connection with the crime charged in this case may be considered by you in light of all the other evidence in the case. If you believe such attempts occurred, you may consider whether that evidence shows a consciousness of guilt and determine the significance to be attached to any such conduct.

FINAL INSTRUCTION NO. 5 – KNOWLEDGE AND INTENT

Intent or knowledge may be proven like anything else. You may consider any statements made or acts done by the defendant and all the facts and circumstances in evidence that may aid in a determination of the defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

FINAL INSTRUCTION NO. 6 – IMPEACHMENT

In Preliminary Instruction No. 7, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, the statements were not admitted to prove that the contents of those statements are true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and, therefore, whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight, if any, you think it deserves.

Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

FINAL INSTRUCTION NO. 7 – EXPERT WITNESS

You have heard testimony from a person described as an expert. Persons who, by knowledge, skill, training, education or experience, have become an expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

FINAL INSTRUCTION NO. 8 – PRESUMPTION OF INNOCENCE AND BURDEN
OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the government proves, beyond a reasonable doubt, all the elements of an offense charged against him.

The burden is always on the government to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the government's witnesses, or testify.
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

This burden means that you must find the defendant not guilty of an offense charged against him, unless the government proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 9 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the government or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the government's lack of evidence.

The government must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The government's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 10 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the government has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the government has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all the evidence bearing on each element before you.
- Take all the time that you feel is necessary.

Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 11 – DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is guilty or not guilty. If the defendant is guilty, I will decide what the sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and all Instructions, whether written or not. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated July 2, 2026.

BY THE COURT:



CAMELA C. THEELER
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

UNITED STATES OF AMERICA, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> AVERY HAWK WING, <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">5:24-CR-50144-CCT</p> <p style="text-align: center;">VERDICT FORM</p>
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We, the Jury, unanimously find the defendant, Avery Hawk Wing, as follows:

POSSESSION OF A FIREARM BY A PROHIBITED PERSON	VERDICT
On the charge of “possession of a firearm by a prohibited person” as explained in Final Instruction No. 2, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

Please sign and date this Verdict Form.

Date

Foreperson