UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. AVERY HAWK WING, Defendant.	5:24-CR-50144-CCT **PRELIMINARY INSTRUCTIONS TO THE JURY**

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PRELIMINARY INSTRUCTION NO. 1 – INTRODUCTION

Congratulations on your selection as a juror. These Instructions are to help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged the defendant Avery Hawk Wing with one count of "possession of a firearm by a prohibited person." An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to the crime charged against him, and he is presumed absolutely not guilty of the charged offense unless or until the government proves his guilt on this offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the government has proved the defendant's guilt on the charged offense beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these Instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Remember, only defendant Avery Hawk Wing, and not anyone else, is on trial. Also, the defendant is on trial *only* for the offense charged against him in the Indictment and not for anything else.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all the evidence, and do not be in a hurry to reach a verdict to be finished with the case.

PRELIMINARY INSTRUCTION NO. 2 – IMPORTANT TERMS

Elements

The offense charged consists of "elements," which are the parts of an offense. The government must prove beyond a reasonable doubt all the elements of an offense for you to find the defendant guilty of that offense.

Timing

The Indictment alleges an approximate date or period of time for the charged offense. The government does not have to prove that an offense occurred on an exact date, only that the offense occurred at a time that was reasonably within the time period alleged for that offense in the Indictment.

Location

You must decide whether the conduct or actions of the defendant occurred in the District of South Dakota.

Verdict Form

A Verdict Form will be attached to your Final Instructions.

- A Verdict Form is simply a written notice of your decision.
- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question.
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict.

PRELIMINARY INSTRUCTION NO. 3 – ELEMENTS OF THE OFFENSE

Possession of a Firearm by a Prohibited Person

The Indictment charges that "[o]n or about September 3, 2024, at Rapid City, in the District of South Dakota, the defendant, Avery Hawk Wing, having been convicted of a crime punishable by imprisonment for a term exceeding one year, and knowing he had been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm, to wit, a Hi-Point, Model 995, 9mm caliber, semi-automatic rifle, bearing serial number E40271, which had been previously shipped and transported in interstate and foreign commerce, all in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8)."

For you to find Avery Hawk Wing guilty of this offense, 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;**

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

***Four*, that 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.

This Instruction is only a preliminary outline of the elements of the offense charged in the Indictment. At the end of the trial, I will give you Final Instructions on these elements. If there is any difference between what I just told you, and what I tell you in the instructions I give you at the end of the trial, the instructions given at the end of the trial must govern.

PRELIMINARY INSTRUCTION NO. 4 – 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 charge, 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.

PRELIMINARY INSTRUCTION NO. 5 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense, and not doubt based on speculation.

- 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.

PRELIMINARY INSTRUCTION NO. 6 – DEFINITION OF EVIDENCE

I have mentioned the word "evidence." The "evidence" in this case will consist of the testimony of witnesses, the documents and other things I receive as exhibits, the facts that have been stipulated to (this is, formally agreed to by the parties), and the facts that have been judicially noticed (this is, facts which I say you may, but are not required to, accept as true, even without evidence).

You may use reason and common sense to draw deductions or conclusions from facts which will be established by the evidence in the case.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

PRELIMINARY INSTRUCTION NO. 7 – TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it. In evaluating a witness's testimony, consider the following:

- the witness's:
  - intelligence
  - memory
  - opportunity to have seen and heard what happened
  - motives for testifying
  - interest in the outcome of the case
  - manner while testifying
  - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or whether they are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility.

You should not give any more or less weight to a witness's testimony just because the witness is one of the following:

- a public official or law enforcement officer, or
- an expert.

You may hear testimony from persons described as experts. 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.

You may give any witness's opinion whatever weight you think it deserves, but you should consider the following:

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all the other evidence in the case.

If the defendant testifies, you should judge his testimony in the same way that you judge the testimony of any other witness.

It is your exclusive right to give any witness's testimony whatever weight you think it deserves.

PRELIMINARY INSTRUCTION NO. 8 – OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself.
- Do not hold it against a lawyer or a party if the lawyer makes an objection. Lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible.

PRELIMINARY INSTRUCTION NO. 9 – BENCH CONFERENCES AND RECESSES

During trial, it may be necessary for me to talk with the lawyers out of your hearing. I may conference with the lawyers over special headsets while a noise plays over speakers in the courtroom to prevent you from hearing, or I may call a recess and let you leave while I talk to the lawyers.

- These conferences and recesses are done to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient.
- We will do our best to keep such conferences and recesses short and infrequent.

PRELIMINARY INSTRUCTION NO. 10 – NOTE-TAKING

You are allowed to take notes during the trial if you want to. Be sure that your notetaking does not interfere with listening to and considering all the evidence.

- Your notes are not necessarily more reliable than your memory or another juror's notes or memory.
- Do not discuss your notes with anyone before you begin your deliberations.
- Take your notes with you and leave them in the jury room during recesses and at the end of the day.
- At the end of trial, you may take your notes with you or leave them to be destroyed.
- No one else will ever be allowed to read your notes unless you let them.

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

PRELIMINARY INSTRUCTION NO. 11 – CONDUCT OF JURORS DURING TRIAL

You must decide this case ***solely*** on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- Until the trial is over, when you are outside the courtroom do not let anyone ask you about or tell you anything about this case, about anyone involved with it, or about any news story, rumor, or gossip. If someone should try to talk to you about this case during the trial, please report it to me.
- The parties have a right to have the case decided only on evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we don't know about, then your verdict may be influenced by inaccurate, incomplete, or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in violation of the rules of this country and you will have done an injustice. Remember,

you have taken an oath to abide by these rules, and it is very important that you do so.

- During the trial, you should not talk to any of the parties, lawyers, or witnesses, even to pass the time of day. That way there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you either.
- You may tell your family, friends, teachers, co-workers, or employer about your participation in this trial so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. Do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means you are not permitted to talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, "app," or website, such as Facebook, YouTube, Instagram, Snapchat, TikTok, WhatsApp, or X, formerly known as Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, through any Artificial Intelligence (AI) tool or chatbot, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps, any AI tool or chatbot, Google Earth, or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the

Internet, or in any "blog," about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on "implicit biases." Everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of. These hidden thoughts are called "implicit biases" and can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes and dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court

Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

PRELIMINARY INSTRUCTION NO. 12– OUTLINE OF TRIAL

The trial will proceed as follows:

- After these preliminary instructions, the government may make an opening statement.
- Next, the lawyer for the defendant may, but does not have to, make an opening statement.
- An opening statement is not evidence. It is simply a summary of what the lawyer expects the evidence to be.
- The government will then present its evidence and call witnesses, and the lawyer for the defendant may, but has no obligation to, cross-examine those witnesses.
- Following the government's case, the lawyer for the defendant may, but does not have to, present evidence and call witnesses. If the defense calls witnesses, the government may cross-examine them.
- After the evidence is concluded, I will give you the Final Instructions.
- The lawyers will then make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence.
- You will then retire to deliberate on your verdict.

Dated June 30, 2026.

BY THE COURT:

CAMELA C. THEELER
UNITED STATES DISTRICT JUDGE