

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>JOSEPH KENNETH HENRY,</p> <p>Defendant.</p>	<p>4:22-CR-40018 4:21-CR-40106</p> <p>JURY INSTRUCTIONS (FORFEITURE)</p>
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INSTRUCTION NO. 1

In view of your verdict that the Defendant is guilty of the offense of Possession of a Firearm by a Prohibited Person, as charged in the first Indictment, you must now render a special verdict concerning whether the Defendant must forfeit certain property which the government claims is subject to forfeiture pursuant to 18 U.S.C. § 924(d), 28 U.S.C. § 2461(c), and 21 U.S.C. § 853 because they are a firearm and ammunition involved in the commission of a firearms offense.

Under federal law, any person who is convicted of the firearms offense for which the Defendant has been found guilty shall forfeit to the United States all firearms and ammunition involved in the commission of such violation.

To be forfeitable, the property need not be used exclusively for illegal activity; property that is used the vast majority of the time for legitimate purposes may nevertheless be forfeited if it facilitates the criminal offense. Facilitation of even a single felony offense is sufficient to justify forfeiture.

You must now consider what verdict to render on the question of whether there is a nexus, that is a connection, between property that the asset forfeiture allegation of the first Indictment alleges shall be forfeited to the United States and the firearms offense for which you have already found the Defendant guilty.

You are instructed, however, that your previous finding that the Defendant is guilty of committing the firearms offense alleged in the first Indictment is final, conclusive, and binding. Because you are bound by your previous finding that the Defendant is guilty, I direct you not to discuss in your forfeiture deliberations whether the Defendant is guilty or not guilty of the firearms offense.

All of my previous instruction regarding direct and circumstantial evidence, credibility of witnesses, and duty to deliberate apply with respect to your verdict regarding forfeiture.

INSTRUCTION NO. 2

The previous instruction on the United States' burden of proof regarding your verdict on the guilt of the Defendant does not apply to your deliberation and verdict regarding forfeiture. In deliberating and deciding your verdict regarding forfeiture, you are instructed that the United States need only prove by a preponderance of the evidence that pursuant to 18 U.S.C. § 924(d), 28 U.S.C. § 2461(c), and 21 U.S.C. § 853, the property listed in the asset forfeiture allegation of the first Indictment is subject to forfeiture as they are firearms and ammunition involved in the commission of the firearms offense of which the Defendant has been convicted.

You are instructed that in order for the United States to establish by a preponderance of the evidence that the property is subject to forfeiture, it must prove that it is more likely than not that the property constitutes firearms and ammunition involved in the commission of the firearms offense.

INSTRUCTION NO. 3

While deliberating, you may consider any evidence, including testimony, offered by the parties at any time during the trial.

INSTRUCTION NO. 4

In determining whether property is subject to forfeiture, you should not consider what might happen to property that is declared forfeited as that is exclusively a matter for the Court to decide. You should disregard any claims that other persons may have to property. The interests that other persons may have in the property will be taken into account by the Court at a later time. Any claims that the forfeiture of the property would constitute excessive punishment will also be taken into account by the Court at a later time, as will the issue regarding whether or not the property is presently available.

Your sole concern now is to determine whether the firearm and ammunition were involved in the commission of the firearms offense for which the Defendant was found guilty.

INSTRUCTION NO. 5

The Special Verdict form lists the property which the United States asserts the Defendant should forfeit as property involved in the commission of the firearms offense for which the Defendant was found guilty. Your verdict on the Special Verdict form must be unanimous.

You may answer by simply putting an "X" or check mark in the space provided next to the words "YES" or "NO." The foreperson must then sign and date the Special Verdict form.

SPECIAL VERDICT FORM

We, the Jury, unanimously find, by a preponderance of evidence, that Defendant Joseph Henry's interest in the following property is subject to forfeiture to the United States:

1. Calwestco, Jennings Trademark, model J-22, .22 Long Rifle caliber, semi-automatic pistol, bearing serial number 629059

_____ YES

_____ NO

2. six (6) rounds of Federal brand and .22 Long Rifle caliber ammunition seized on June 3, 2021

_____ YES

_____ NO

Dated this _____ day of November, 2024.

Foreperson