

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GILBERT MESTETH, IV,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">5:24-CR-50086-KES</p> <p style="text-align: center;">FINAL INSTRUCTIONS TO THE JURY</p>
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VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during 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 Gilbert Mesteth, IV guilty of the offense of possession of a firearm or ammunition by a prohibited person as charged in the Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, on or about May 3, 2023, Mesteth was an unlawful user of a controlled substance;

The phrase “unlawful user of a controlled substance” means a person who uses a controlled substance in a manner other than as prescribed by a licensed physician. The defendant must have been actively engaged in the use of a controlled substance during the time he possessed the firearm or ammunition, but the law does not require that he used the controlled substance at the precise time he possessed the firearm or ammunition. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct.

Two, that on or about May 3, 2023, Mesteth knowingly possessed a firearm or ammunition, that is: a Springfield Armory, model XD-45 Tactical, .45 AUTO caliber pistol, bearing SN: XD710886, or eleven (11) rounds of Hornady brand, .45 AUTO caliber ammunition with copper jacketed hollow-point bullets;

The government need not prove beyond a reasonable doubt that Mesteth possessed both the firearm and ammunition. Instead, the government must prove beyond a reasonable doubt that Mesteth possessed the firearm or ammunition. For the government to meet its burden, you must unanimously agree as to whether Mesteth possessed the firearm or possessed the ammunition, or possessed both.

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 acts and words, along with all the evidence, in deciding whether the defendant acted knowingly. The government is not required to prove the defendant knew his acts or omission 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.

The government does not have to prove who “owned” the firearm.

Three, at the time Mesteth knowingly possessed a firearm or ammunition, he knew that he was an unlawful user of a controlled substance;

And four, that the firearm or ammunition was transported across a state line at some time during or before Mesteth’s possession of it.

If you have found beyond a reasonable doubt that the firearm or ammunition in question was manufactured in a state or country other than the State of South Dakota, and that the defendant possessed that firearm or ammunition in the State of South Dakota, you may, but are not required to, find that the firearm or ammunition was transported across a state line.

The United States is not required to prove that the defendant knew the firearm or ammunition had crossed a state line.

In the alternative, Mesteth can be found guilty of the offense of possession of a firearm or ammunition by a prohibited person as charged in the Superseding Indictment if the prosecution proves the following four essential elements beyond a reasonable doubt:

One, on or about May 3, 2023, Mesteth had been convicted of a crime punishable by imprisonment for more than one year;

Two, that on or about May 3, 2023, Mesteth knowingly possessed a firearm or ammunition, that is: a Springfield Armory, model XD-45 Tactical, .45 AUTO caliber pistol, bearing SN: XD710886, or eleven (11) rounds of Hornady brand, .45 AUTO caliber ammunition with copper jacketed hollow-point bullets;

The same instructions described above for element two apply here.

Three, at the time Mesteth knowingly possessed a firearm or ammunition, he knew that he had been convicted of a crime punishable by imprisonment for more than one year;

And four, that the firearm or ammunition was transported across a state line at some time during or before Mesteth's possession of it.

The same instructions described above for element four apply here.

There are two theories identified in the Superseding Indictment for why Mesteth is prohibited from possessing a firearm: that he was an unlawful user of a controlled substance, and he was previously convicted of a crime punishable by imprisonment for more than one year. The government need not prove beyond a reasonable doubt that Mesteth is prohibited under both theories. Instead, the government must prove beyond a reasonable doubt that Mesteth was prohibited under at least one of these theories. You must unanimously agree as to which prohibited status applies to Mesteth.

For you to find Mesteth guilty of possession of a firearm or ammunition by a prohibited person as charged in the Superseding Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of possession of a firearm or ammunition by a prohibited person as charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 3 – POSSESSION

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

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.

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

FINAL INSTRUCTION NO. 4 – REDACTION OF EXHIBITS

There are certain things you must bear in mind in order to consider the evidence in this case. Exhibits 3 and 4 have a portion of them redacted or edited to ensure that the exhibits comply with the Rules of Evidence. I made certain rulings about these redactions. You should pay no attention to the redactions whatsoever. Those are legal matters. You should not concern yourself with the reason for the redaction, nor should you hold it against either party that this redaction has occurred.

FINAL INSTRUCTION NO. 5 – IMPEACHMENT

In Preliminary Instruction No. 6, 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, they were not admitted to prove that the contents of those statements were 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. 6 – 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 prosecution proves, beyond a reasonable doubt, all of the elements of the offense charged against him.

The burden is always on the prosecution 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 prosecution'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 the offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 7 – REASONABLE DOUBT

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

- A reasonable doubt may arise from evidence produced by the prosecution 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 prosecution's lack of evidence.

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

FINAL INSTRUCTION NO. 8 – 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 prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution 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 of 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. 9 – DUTY DURING DELIBERATIONS

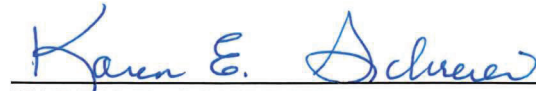
You must follow certain rules while conducting your deliberations and returning your verdict:

- 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 these Instructions. 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 February 6, 2025.

BY THE COURT:

A handwritten signature in blue ink, reading "Karen E. Schreier", is written over a horizontal line.

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

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<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>GILBERT MESTETH, IV,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">5:24-CR-50086-KES</p> <p style="text-align: center;">VERDICT</p>
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We, the Jury, unanimously find the defendant, Gilbert Mesteth, IV, as follows:

	POSSESSION OF A FIREARM BY A PROHIBITED PERSON	VERDICT
Step 1:	On the charge of “possession of a firearm or ammunition by a prohibited person,” as explained in Final Instruction No. 2, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2:	<p>If you find Mesteth guilty of this offense, please indicate which category of “prohibited person” you unanimously determined Mesteth to fall into:</p> <p><input type="checkbox"/> Mesteth was knowingly an unlawful user of a controlled substance, or</p> <p><input type="checkbox"/> Mesteth was knowingly and previously convicted of a crime punishable by more than one year imprisonment, or</p> <p><input type="checkbox"/> Mesteth was knowingly an unlawful user of a controlled substance and knowingly and previously convicted of a crime punishable by more than one year imprisonment.</p>	

Please sign and date the Verdict Form.

Date

Foreperson