

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>BORU GUYE WAKO, JR.,</p> <p>Defendant.</p>	<p>4:23-CR-40128-KES</p> <p>FINAL INSTRUCTIONS TO THE JURY</p>
-------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------

**TABLE OF CONTENTS**

FINAL INSTRUCTIONS

FINAL INSTRUCTION NO. 1 – INTRODUCTION .....	1
FINAL INSTRUCTION NO. 2 – POSSESSION OF A FIREARM BY A PROHIBITED PERSON.....	2
FINAL INSTRUCTION NO. 3 – ILLEGAL RECEIPT OF A FIREARM BY A PERSON UNDER INDICTMENT.....	4
FINAL INSTRUCTION NO. 4 – POSSESSION .....	6
FINAL INSTRUCTION NO. 5 – PENALTIES .....	7
FINAL INSTRUCTION NO. 6 – DEFENDANT’S PREVIOUS CRIMES.....	8
FINAL INSTRUCTION NO. 7 – EYEWITNESS TESTIMONY .....	9
FINAL INSTRUCTION NO. 8 – IMPEACHMENT.....	11
FINAL INSTRUCTION NO. 9 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF .....	12
FINAL INSTRUCTION NO. 10 – REASONABLE DOUBT .....	13
FINAL INSTRUCTION NO. 11 – DUTY TO DELIBERATE .....	14
FINAL INSTRUCTION NO. 12 – DUTY DURING DELIBERATIONS.....	15

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 Boru Guye Wako, Jr., guilty of the offense of possession of a firearm 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 March 8, 2023, Wako <sup>KES</sup> ~~was~~ had been convicted of a crime punishable by imprisonment for more than one year;**

Under South Dakota law, a finding of guilt at trial is considered a “conviction.”

**Two, that on or about March 8, 2023, Wako knowingly possessed a firearm, that is: a 380 Ruger LCP MAX, bearing serial number 380908044;**

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.

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which 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.

The term “firearm” means any weapon that 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, that at the time Wako knowingly possessed a firearm, he knew that he had 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 Wako’s possession of it.**

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

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

For you to find Wako guilty of possession of a firearm by a prohibited person as charged in Count 1 of 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 by a prohibited person as charged in Count 1 of the Superseding Indictment.

FINAL INSTRUCTION NO. 3 – ILLEGAL RECEIPT OF A FIREARM BY A PERSON  
UNDER INDICTMENT

For you to find Boru Guye Wako, Jr., guilty of the offense of illegal receipt of a firearm by a person under indictment as charged in Count 2 of the Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

**One, on or about March 8, 2023, Wako was under indictment for a crime punishable by imprisonment for a term exceeding one year;**

**Two, that on or about March 8, 2023, Wako, while under indictment, knowingly possessed a firearm, that is: a 380 Ruger LCP MAX, bearing serial number 380908044;**

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.

Knowledge and intent are further explained above in Instruction No. 2.

The term “firearm” is further explained above in Instruction No. 2.

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

**Three, that at the time Wako knowingly possessed a firearm, he knew that he was under indictment for a crime punishable by imprisonment for a term exceeding one year;**

**And four, that the firearm was transported across a state line at some time during or before Wako’s possession of it;**

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

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

For you to find Wako guilty of illegal receipt of a firearm by a person under indictment as charged in Count 2 of 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 illegal receipt of a firearm by a person under indictment as charged in Count 2 of the Superseding Indictment.

FINAL INSTRUCTION NO. 4 – 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.

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.

Mere presence on the scene or association with another person who possesses a firearm is not in itself sufficient to constitute possession of a firearm.

Ownership of the firearm can be a factor in determining possession, but a person may possess a firearm owned by another person.

FINAL INSTRUCTION NO. 5 – PENALTIES

You have heard evidence that the defendant was previously convicted of the crime of Second Degree Escape, a Class 5 felony under the laws of the State of South Dakota, and Aggravated Eluding, a Class 6 felony under the laws of the State of South Dakota. You are instructed that Second Degree Escape is punishable by up to 5 years' imprisonment. You are instructed that Aggravated Eluding is punishable by up to 2 years' imprisonment.

You have also heard evidence that on or about March 8, 2023, the defendant was under Indictment for the crime of Possession of a Controlled Substance, a Class 5 felony under the laws of the State of South Dakota, and Aggravated Eluding, a Class 6 felony under the laws of the State of South Dakota. You are instructed that Possession of a Controlled Substance is punishable by up to 5 years' imprisonment. You are instructed that Aggravated Eluding is punishable by up to 2 years' imprisonment.



FINAL INSTRUCTION NO. 6 – DEFENDANT’S PREVIOUS CRIMES

You have heard evidence that the defendant was previously convicted of crimes punishable by imprisonment for more than one year because that fact is an element of the crime of possession of a firearm by a prohibited person, as charged in the Superseding Indictment.

This evidence, however, does not mean that the defendant committed the crime charged here. You may use the evidence of the prior convictions only to help you decide whether the government has proven that the defendant knew that he had been convicted of a crime punishable by imprisonment for more than one year or whether he knew that he was under an indictment for a crime punishable by imprisonment for more than one year. The existence of prior convictions or indictments may not be used for any other purpose.

## FINAL INSTRUCTION NO. 7 – EYEWITNESS TESTIMONY

The value of identification testimony depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later. Eyewitness identification must be evaluated with particular care.

In evaluating such testimony you should consider all of the factors mentioned in these instructions concerning your assessment of the credibility of any witness, and you should also consider, in particular, whether the witness had an adequate opportunity to observe the person in question at the time of the offense and whether the identification is reliable. You may consider, in that regard, such matters as the witness's eyesight and ability to observe the person in question under the circumstances, the length of time the witness had to observe the person in question, any intoxication or other impairment of the witness at the time the witness observed the person in question, the prevailing conditions at that time in terms of lighting, visibility or distance and the like, whether the witness had known or observed the person at earlier times, and any description provided by the witness after the event and before identifying the defendant. Factors that bear on the likelihood of misidentification include the passage of time between the witness's exposure to the person in question and identification of the defendant, whether the witness was under stress when he first encountered the person in question, whether the person in question carried a weapon, and the race of the person in question and the witness.

You should also consider whether the identification made by the witness after the offense was the product of his own recollection. You may consider, in that regard, the strength of the identification, and the circumstances under which the identification was made, keeping in mind that a witness may be certain but mistaken.

You may take into account any occasions in which the witness failed to make an identification of the defendant, or made an identification that was inconsistent with his identification at trial. The government has the burden of

proving identity beyond a reasonable doubt. It is not essential that the witness be free from doubt as to the correctness of the identification. However you, the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may find him guilty. If you are not convinced beyond a reasonable doubt that the defendant was the person who committed the crime, you must find the defendant not guilty.

FINAL INSTRUCTION NO. 8 – 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. 9 – 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 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. 10 – 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. 11 – 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. 12 – DUTY DURING DELIBERATIONS

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

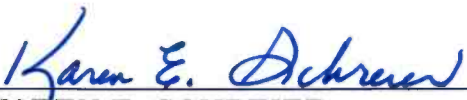
- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is guilty or not guilty. If the defendant is guilty, I will decide what the sentence should be.
- Communicate with me by sending me a note 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 July 1, 2025.

BY THE COURT:

  
\_\_\_\_\_  
KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE