

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

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UNITED STATES OF AMERICA,

Criminal No. 22-50118 (JRT)

Plaintiff,

v.

**THE COURT’S INSTRUCTIONS  
TO THE JURY**

EVAN BROWN BULL,

Defendant.

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The Court will now give you instructions on the law and on your duties as jurors.

### **1. INTRODUCTION**

Please continue to follow the instructions given to you earlier by the Court. You must not single out some instructions and ignore others, because *all* are important, whether given to you in writing or not.

Written copies of the instructions the Court is about to give you will be available to you in the jury room. Please remember that **all** instructions, whenever given and whether in writing or not, must be followed.

## **2. GENERAL DUTIES**

It is your duty as jurors to find from the evidence what the facts are. You will then apply the law, as given to you in these instructions, to those facts. You must follow the Court's instructions on the law, even if you thought the law was different or if you think the law should be different.

The lawyers may have referred to some of the applicable rules of law in their closing arguments to you. If any difference appears to you between the law as stated by counsel and the law as stated by the Court in these instructions, you, of course, must follow the instructions given to you by the Court.

Do not allow sympathy or prejudice to influence you. The law requires a just verdict, unaffected by anything except the evidence, your common sense, and the law as given to you by the Court.

### **3. PARTIES**

Defendant Evan Brown Bull shall be referred to in these instructions as “the defendant.” The United States shall be referred to as “the government” or “the prosecution.”

#### **4. BIAS AND PREJUDICE**

You must decide the case solely on the evidence and the law before you, without bias or prejudice as to any party. All parties expect that you will carefully and impartially consider all of the evidence, follow the law that is being given to you, and reach a just verdict, regardless of the consequences.

It is important that you discharge your duties as jurors without discrimination. Bias regarding the race, ethnicity, religious beliefs, national origin, sexual orientation, gender, or gender identity of the plaintiff, defendant, witnesses, and lawyers should play no part in how you exercise your judgment during the trial.

You should consider and decide this case as a dispute between persons of equal standing. You must not be influenced by sympathy, prejudice, public opinion, personal likes or dislikes, or bias, including unconscious or implicit bias. Unconscious or implicit biases are stereotypes, attitudes, or preferences that you may consciously reject but that may affect your judgment without your conscious awareness, control, or intention.

## 5. EVIDENCE AND LIMITATIONS

The evidence in this case consists of the testimony of witnesses and the documents and items received as exhibits.

Please remember also what is not evidence:

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 the Court sustained an objection to a question, you must ignore the question and not guess what the answer might have been.
3. Testimony that the Court told you to disregard is not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

You are to base your verdict only on the evidence received in the case. In your consideration of the evidence received, however, you are not limited to the statements of the witness. In other words, you are not limited solely to what you see and hear as the witnesses testified. You are permitted to draw from the facts, which you find have been proven, such reasonable inferences as you feel are justified in the light of your experience and common sense. Inferences are simply deductions or conclusions which reason and common sense lead you to draw from the facts as established by the evidence in the case.

You also should not be concerned with the terms “direct evidence” and “circumstantial evidence.” The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.



## **6. COURT'S OPINION**

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or counsel.

## **7. CREDIBILITY OF WITNESSES**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, you may believe only part of what a witness said, or you may believe none of what a witness said.

In deciding what testimony to believe, you may consider the witness's intelligence, the opportunity the witness had to see or hear the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or whether it is an intentional falsehood. That may depend on whether the contradiction has to do with an important fact or only with a small detail.

## **8. INCONSISTENT STATEMENTS**

The testimony of a witness may be discredited or, as we sometimes say, impeached by showing that he or she previously made statements which are different than or inconsistent with his or her testimony here in Court. The earlier inconsistent or contradictory statements are admissible only to discredit or impeach the credibility of the witness and not to establish the truth of these earlier statements made somewhere other than here during this trial. It is the responsibility of the jury to determine the credibility, if any, to be given the testimony of a witness who has made prior inconsistent or contradictory statements.

If a person is shown to have knowingly testified falsely concerning any important or material matter, you obviously have a right to distrust the testimony of such an individual concerning other matters. You may reject all of the testimony of that witness or you may give it such weight or credibility as you may think it deserves.

## 9. JUDGING THE EVIDENCE

There is nothing particularly different in the way in which a juror should consider the evidence in a trial from the way in which any reasonable and careful person would treat any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case. You are also expected to give such evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the defendant is proven guilty beyond a reasonable doubt, then you should reach that result. If the defendant is not proven guilty beyond a reasonable doubt, then you should reach that result.

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

You should also remember that it would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions

of the Court. Remember that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence, because the burden of proving guilt beyond a reasonable doubt is always placed on the prosecution.

### **10. DEFENDANT'S TESTIMONY**

A defendant in a criminal case has an absolute right under the United States Constitution not to testify. The fact that a defendant did not testify must not be discussed or considered by the jury in any way when deliberating and in arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his privilege under the Constitution and did not testify.

### **11. DEFENDANT'S OTHER ACTS**

You have heard evidence and testimony that the defendant committed acts similar to the one charged in this case. You may consider this evidence only if you unanimously find it is more likely true than not true that the defendant committed the act. This is a lower standard than proof beyond a reasonable doubt. You decide that by considering all of the evidence relating to the alleged act, then deciding what evidence is more believable.

If you find that this evidence has not been proved, you must disregard it. If you find this evidence has been proved, then you may consider it only for the limited purpose of deciding whether the defendant had the state of mind or intent necessary to commit the crime charged in the indictment; or had a motive or opportunity to commit the acts described in the indictment; or acted according to a plan; or whether the similarity between the other acts and the one charged in this case suggests the same person committed all of them. You should give it the weight and value you believe it is entitled to receive.

You have heard evidence that the defendant was previously convicted of a crime. The fact that he was previously convicted of a crime does not mean that he committed the crimes charged here, and you must not use that evidence as proof of the crimes charged in this case.

## **12. EXPERT WITNESS OPINION TESTIMONY**

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts 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' 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.



### **13. NUMBER OF WITNESSES CALLED**

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.

#### **14. PRESUMPTION OF INNOCENCE, BURDEN OF PROOF**

The Indictment in this case charges the defendant with possession of ammunition by a prohibited person. The defendant has pleaded not guilty to that charge.

The Indictment is simply the document that formally charges the defendant with the crime for which he is on trial. The Indictment is not evidence. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate with no evidence against him.

The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the prosecution proved during the trial, beyond a reasonable doubt, each element of the crime charged.

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the prosecution throughout the trial. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

### **15. INDICTMENT NOT EVIDENCE**

The next two instructions summarize the charges against the defendant and provide you with the indictment. An indictment is simply an accusation. It is not evidence of anything. This summary of the charges is also not evidence. The defendant, even though charged, began this trial with no evidence against him. The defendant has pleaded not guilty to the charges in the indictment and must be presumed innocent, unless and until proven guilty beyond a reasonable doubt. There is no burden upon a defendant to prove that he is innocent. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the prosecution proves, beyond a reasonable doubt, each essential element of a crime charged.

## **16. SUMMARY OF INDICTMENT**

The indictment in this case charges the defendant with one crime. Under Count I, the indictment charges that the defendant committed the crime of possession of ammunition by a prohibited person. The defendant has pled not guilty to this charge.

**17. INDICTMENT**

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	<b>INDICTMENT</b>
	)	
Plaintiff,	)	
	)	18 U.S.C. §§ 922(g)(1)
v.	)	and 924(a)(2)
	)	
EVAN BROWN BULL,	)	
	)	
Defendant.	)	
	)	

THE UNITED STATES GRAND JURY CHARGES THAT:

**COUNT 1**

(Possession of Ammunition by a Prohibited Person)

On or about March 20, 2022, in the State and District of South Dakota, the defendant,

**EVAN BROWN BULL,**

having been convicted of a crime punishable by imprisonment for a term exceeding one year, and then knowing he had been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess ammunition, to wit,

- Eleven rounds of Black Hills Ammunition brand, .380 AUTO caliber ammunition with copper jacketed round nose projectiles, brass cartridge cases, and brass-colored primers, bearing the headstamp markings of "JAG" and ".380 Auto";

- Forty-nine rounds of Blazer brand, 9x19mm Luger ammunition with copper jacketed round nose projectiles, aluminum cases, and nickel-colored primers, bearing the headstamp markings of “CCI”, “9mm LUGER”, and “NR”; and
- Forty-nine rounds of PMC brand, .38 Special caliber ammunition with copper jacketed round nose projectiles, brass cartridge cases, and brass-colored primers, bearing the headstamp markings of “PMC” and “38 SPL”;

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)(2).

### **18. VERDICT AS TO DEFENDANT ONLY**

You must determine whether the prosecution has proven beyond a reasonable doubt the guilt of the defendant for the charge in the indictment. The prosecution must prove beyond a reasonable doubt the essential elements of the crime charged. You are not called upon to return a verdict as to the guilt or innocence of any other person.

So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the defendant for the crime charged in the indictment, you should so find him guilty, even though you may believe that one or more other unindicted persons are also guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the defendant not guilty.

### **19. APPROXIMATE DATES**

The indictment charges that the offenses alleged in the indictment were committed “on or about” certain dates.

Although it is necessary for the prosecution to prove beyond a reasonable doubt that an offense was committed on a date reasonably near the date alleged, it is not necessary for the prosecution to prove that an offense was committed precisely on the date charged.



## **20. PROOF OF INTENT OR KNOWLEDGE**

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

## **21. POSSESSION OF AMMUNITION BY A PROHIBITED PERSON**

It is a crime for a person convicted of a crime punishable by imprisonment for more than one year to possess ammunition, as charged in Count 1 of the indictment. This crime has four elements:

**One**, the defendant had been convicted of a crime punishable by imprisonment for more than one year;

**Two**, after that, the defendant knowingly possessed ammunition;

**Three**, at the time the defendant knowingly possessed ammunition, he knew he had been convicted of a crime punishable by imprisonment for more than one year; and

**Four**, the ammunition was transported across a state line at some time during or before the defendant's possession of it.

If all these elements have been proven unanimously and without a reasonable doubt as to the defendant, then you must find the defendant guilty of possession of ammunition by a prohibited person, as charged in Count 1 of the indictment; otherwise, you must find the defendant not guilty of this crime.

## 22. DEFINITIONS

**“Knowingly”:** The term “knowingly”, as used in these instructions to describe the alleged state of mind of the defendant, means that he was conscious and aware of his action, realized what he was doing or what was happening around him, and did not act because of ignorance, mistake, or accident.

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

### 23. FINAL INSTRUCTIONS

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your deliberations.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without infringing on individual judgment, because a verdict – whether guilty or not guilty – must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not change your opinion simply because other jurors think it is right, or simply in order to reach a verdict.

*Third*, if the defendant is found guilty, the sentence to be imposed is the Court's responsibility. You may not consider possible punishment in any way in deciding whether the prosecution has proven its case beyond a reasonable doubt.

*Fourth*, if you need to communicate with the Court during your deliberations, you may send a note to me through the marshal, signed by one or more jurors. I will respond as soon as possible in writing. Remember that you should not tell anyone during your

deliberations—including me—how the jury stands, numerically or otherwise, on the question of whether the prosecution has sustained its burden of proof until after you have reached a unanimous verdict.

*Fifth*, your verdict must be based solely on the evidence and on the law which the Court has given to you in these instructions. Nothing the Court has said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

*Finally*, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal that you are ready to return to the courtroom.

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

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UNITED STATES OF AMERICA,

Criminal No. 22-50118 (JRT)

Plaintiff,

v.

**THE COURT'S FORFEITURE  
INSTRUCTIONS  
TO THE JURY**

EVAN BROWN BULL,

Defendant.

---

The Court will now give you instructions on forfeiture and on your duties as jurors.

**1. CRIMINAL FORFEITURE OF PROPERTY**

Members of the jury, you have reached a verdict that the defendant is guilty of possession of ammunition by a prohibited person, as charged in Count I. You now have one more task to perform. The Court must ask you to render a special verdict concerning property the United States has alleged is subject to forfeiture by Evan Brown Bull to the United States. Forfeiture means the defendant loses any ownership or interest he has or claims to have in the property, as a part of the penalty for engaging in criminal activity. You need not concern yourself with any other person's interest in the property. The Court will take care of any such claims. Your only concern is with defendant Evan Brown Bull's interest in the property.

The United States alleges the following property is to be forfeited:

**Ammunition Group 1:** Eleven rounds of Black Hills Ammunition brand, .380 AUTO caliber ammunition with copper jacketed round nose projectiles, brass cartridge cases, and brass-colored primers, bearing the headstamp markings of “JAG” and “.380 Auto”;

**Ammunition Group 2:** Forty-nine rounds of Blazer brand, 9x19mm Luger ammunition with copper jacketed round nose projectiles, aluminum cases, and nickel-colored primers, bearing the headstamp markings of “CCI”, “9mm LUGER”, and “NR”; and

**Ammunition Group 3:** Forty-nine rounds of PMC brand, .38 Special caliber ammunition with copper jacketed round nose projectiles, brass cartridge cases, and brass-colored primers, bearing the headstamp markings of “PMC” and “38 SPL.”

You must determine what property, if any, is subject to forfeiture. Property is subject to forfeiture if the United States has proved, by the greater weight of the evidence that the property was used in any way or otherwise involved in the offense of Possession of Ammunition by a Prohibited Person, as charged in Count 1 of the Indictment.

Other than the instruction about the burden of proof, all the previous jury instructions apply to this special verdict.

A Special Verdict Form has been prepared for your use. With respect to each property, you are asked to determine unanimously whether it is to be forfeited to the United States. You may answer by simply putting an “X” or a check mark in the space provided next to the words “yes” or “no.” The foreperson must then sign and date the special verdict form.

## **2. BURDEN OF PROOF FOR CRIMINAL FORFEITURE OF PROPERTY**

To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. The decision is made by considering all of the evidence on the subject and deciding which evidence you believe. Each party is entitled to the benefit of all evidence received, regardless of who offered the evidence. Greater weight of the evidence is a lesser standard than proof beyond a reasonable doubt.