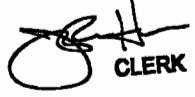


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED
MAY 19 2010

CLERK

UNITED STATES OF AMERICA,)	CR. 08-50087-RHB
)	
Plaintiff,)	
)	
vs.)	JURY INSTRUCTIONS
)	
MARC SEAN WISECARVER,)	
)	
Defendant.)	

Attorney for plaintiff:	Carolyn G. Olson
	Assistant United States Attorney
	515 Ninth St., Room 201
	Rapid City, SD 57701

Attorney for defendant:	Gary G. Colbath
	Assistant Federal Public Defender
	703 Main Street, Second Floor
	Rapid City, SD 57701

INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now, as well as those I gave you earlier, are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 3

I have mentioned the word "evidence." The "evidence" in this case consists of the testimony of witnesses, the documents and other things received as exhibits, the facts that have been stipulated – that is, formally agreed to by the parties, the facts, if any, 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 have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again 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 sustained 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 struck from the record, or 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.

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

INSTRUCTION NO. 4

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, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard 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 an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 5

Title 18, Section 1361 of the United States Code states in pertinent part that:

Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof . . .if the damage to such property exceeds the sum of \$1,000 . . .

shall be guilty of an offense against the laws of the United States.

The crime of Depredation of Government Property as charged in the indictment has the following essential elements, which are:

1. That on or about April 29, 2008, the defendant did willfully injure or commit a depredation against property, namely, a Chevrolet pickup truck bearing license plate G62-2207A;
2. That the property belonged to the United States, or any department or agency thereof;
3. That the defendant acted voluntarily and intentionally;
4. That the damage to the property exceeded \$1000; and
5. That the defendant did not act in self defense.

For you to find the defendant guilty of this crime, the government must prove all of these essential elements beyond a reasonable doubt; otherwise, you must find the defendant not guilty.

INSTRUCTION NO. 6

Any person is justified in the use of force or violence against another person when the person reasonably believes that such conduct is necessary to prevent or to terminate the other person's entry on or other criminal interference with real property lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal right to protect. However, the person is justified in the use of deadly force only in resisting any attempt to murder such person or to commit any felony upon that person.

INSTRUCTION NO. 7

If a person reasonably believes that force is necessary to protect himself from what he reasonably believes to be unlawful physical harm about to be inflicted by another and uses such force, then he acted in self defense.

However, self defense, which involves using force likely to cause death or great bodily harm, is justified only if the person reasonably believes that such force is necessary to protect himself from what he reasonably believes to be a substantial risk of death or great bodily harm.

A defendant asserting self defense is not required to retreat before resorting to force. However, you may consider the availability of retreat to the defendant in evaluating whether he used unreasonable force.

For you to find the defendant guilty of the offense charged, the government must prove beyond a reasonable doubt that the defendant was not acting in self defense.

INSTRUCTION NO. 8

A BIA employee who goes upon private property in the performance of his duty is not a trespasser.

The general rule is that conduct otherwise a trespass is often justifiable by reason of authority vested in the person who does the act, as, for example, an officer of the law acting in the performance of a duty.

INSTRUCTION NO. 9

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But 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 defendant's knowledge or intent. An inference is a deduction or conclusion which reason and common sense leads the jury to draw from the facts which have been established by the evidence in the case.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

INSTRUCTION NO. 10

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 11

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to 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 come to a decision simply because other jurors think it is right, or simply to reach a verdict.

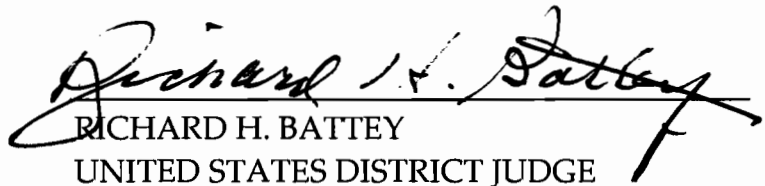
Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me 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 either in writing or orally in open court. Remember that you should not tell anyone — including me — how your votes stand numerically.

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not guilty must be unanimous. Nothing I have 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.

Dated this 19th day of May, 2010.


RICHARD H. BATTEY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 08-50087-RHB
Plaintiff,)	
vs.)	VERDICT
MARC SEAN WISECARVER,)	
Defendant.)	

Please return a verdict by placing an "X" or "√" in the space provided.

**DEPREDAATION OF GOVERNMENT PROPERTY
(18 U.S.C. §1361)**

We, the jury in the above entitled and numbered case, as to the crime of Destruction of Government Property, as charged in the indictment, find the defendant:

_____ NOT GUILTY _____ GUILTY

Foreperson

Date