

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

FILED
AUG 01 2013

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CLERK

NORTHERN DIVISION

UNITED STATES OF AMERICA,

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CR 12-10047

Plaintiff,

JURY

vs.

INSTRUCTIONS

MARIO M. CONTRERAS,

Defendant.

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 the trial are not repeated here.

The instructions I am about to give you now 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

There is nothing particularly different in the way that you should consider the evidence in a trial from that 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 for only those purposes for which it has been received and 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.

Keep constantly in mind 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 as well 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 assumed by the government.

INSTRUCTION NO. 4

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, and any facts that have been stipulated—that is, formally agreed to by the parties.

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 will 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. 5

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.

INSTRUCTION NO. 6

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 of counsel.

You are the sole judges of the evidence received in this case.

INSTRUCTION NO. 7

If you took notes during the trial, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

United States v. Rhodes, 631 F.2d 43, 46 n.3 (5th Cir. 1980).

INSTRUCTION NO. 8

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.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 9

Your decision on the facts of this case should not be determined by the number of witnesses or expert 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.

INSTRUCTION NO. 10

The government and the defendant have stipulated -- that is, they have agreed -- that certain facts are as the government and the defendant agreed. You must therefore treat those facts as having been proved.

INSTRUCTION NO. 11

The Indictment in this case charges the defendant with three different crimes. Count 1 charges that the defendant committed the crime of second degree murder. Count 2 charges that the defendant committed the crime of voluntary manslaughter. Count 3 charges that the defendant committed the crime of assault resulting in serious bodily injury.

You must presume that the Defendant is innocent of the crimes charged against him. The Indictment is only a formal method of beginning a criminal case. It does not create any presumption of guilt; it is merely an accusation. The fact that a person has been indicted does not create any inference, nor is it evidence, that he is guilty of a crime. The presumption of innocence alone is sufficient to acquit the Defendant unless you as jurors are satisfied beyond a reasonable doubt of the Defendant's guilt of the crimes charged from all the evidence that has been introduced in the case against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. Unless the government proves, beyond a reasonable doubt, that the Defendant committed each and every element of each crime charged against him in the Indictment, you must find the Defendant not guilty of that crime.

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

INSTRUCTION NO. 12

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.

INSTRUCTION NO. 13

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state opinions on matters in that field and may also state the reasons for those opinions.

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's 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.

INSTRUCTION NO. 14

The crime of murder in the second degree, as charged in Count 1 of the Indictment, has five essential elements, which are:

One, between January 1, 2012, and January 9, 2012, the defendant unlawfully killed A.C.;

Two, A.C. was an individual who had not attained the age of 18 years;

Three, the defendant unlawfully killed A.C. with malice aforethought;

Four, the defendant is an Indian; and

Five, that the offense took place near Waubay, in Indian Country, in the District of South Dakota.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in Count 1 of the Indictment; otherwise you must find the defendant not guilty of this crime.

If you do not find the defendant guilty of the crime of murder in the second degree as charged in Count 1 of the Indictment, or if after all reasonable efforts you are unable to reach a decision as to Count 1 of the Indictment, you should record that decision on the verdict form and go on to consider whether the defendant committed the offense of voluntary manslaughter, as charged in Count 2 of the Indictment and described in these Instructions.

INSTRUCTION NO. 15

As used in these instructions, "malice aforethought" means an intent, at the time of a killing, willfully to take the life of a human being, or an intent willfully to act in callous and wanton disregard of the consequences to human life; but "malice aforethought" does not necessarily imply any ill will, spite or hatred towards the individual killed.

In determining whether A.C. was unlawfully killed with malice aforethought, you should consider all the evidence concerning the facts and circumstances preceding, surrounding and following the killing which tend to shed light upon the question of intent.

“Callous” as a general matter means insensitive, indifferent, or unsympathetic.

“Wanton” as a general matter means unreasonably or maliciously risking harm while being utterly indifferent to the consequences.

INSTRUCTION NO. 16

The crime of voluntary manslaughter , as charged in Count 2 of the Indictment, has four elements, which are:

One, the defendant voluntarily, intentionally, and unlawfully killed A.C.;

Two, the defendant acted in the heat of passion caused by adequate provocation;

Three, the defendant is an Indian; and

Four, that the offense took place near Waubay, in Indian Country, in the District of South Dakota.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in Count 2 of the Indictment; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 17

The defendant acted upon heat of passion caused by adequate provocation, if:

One, the defendant was provoked in a way that would cause a reasonable person to lose his self-control;

Two, a reasonable person subject to the same provocation would not have regained self-control in the time between the provocation and the killing; and

Three, the defendant did not regain his self-control in the time between the provocation and the killing.

Heat of passion may result from anger, rage, resentment, terror or fear. The question is whether the defendant, while in such an emotional state, lost self-control and acted on impulse and without reflection.

Provocation, in order to be adequate under the law, must be such as would naturally induce a reasonable person in the passion of the moment to temporarily lose self-control and kill on impulse and without reflection

It must be such provocation as would arouse a reasonable person.

INSTRUCTION NO. 18

The crime of assault resulting in serious bodily injury as charged in Count 3 of the Indictment has five elements, which are

One, the defendant intentionally assaulted A.C.;

Two, A.C. was an individual that had not yet reached the age of 18 years;

Three, the assault resulted in serious bodily injury to A.C.;

Four, the defendant is an Indian; and

Five, that the offense took place near Waubay, in Indian Country, in the District of South Dakota.

INSTRUCTION NO. 19

“Serious bodily injury” means bodily injury which involves:

One, a substantial risk of death;

Two, extreme physical pain;

Three, protracted and obvious disfigurement; or

Four, protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

INSTRUCTION NO. 20

The prosecutor and the defendant have stipulated – that is, they have agreed – that:

1. The defendant is an Indian; and
2. The acts alleged are alleged to have taken place in Indian country.

You must therefore treat those facts as having been proved. The existence of those two factors is necessary in order for this Court to have jurisdiction over the case. You may not draw any inference of guilt from the stipulation. The only effect of this stipulation is to establish those two facts.

INSTRUCTION NO. 21

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.

INSTRUCTION NO. 22

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I will 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 your verdicts – 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 of any of the charges, 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, 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 vote stands numerically.

Fifth, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdicts should be -- that is entirely for you to decide.

INSTRUCTION NO. 22, continued.

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 upon the verdicts, 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

NORTHERN DIVISION

UNITED STATES OF AMERICA,	*	CR 12-10047
	*	
Plaintiff,	*	
	*	
vs.	*	VERDICT FORM
	*	
MARIO M. CONTRERAS,	*	
	*	
Defendant.	*	
	*	

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

COUNT 1

We, the jury in the above entitled action, as to the crime of second degree murder, as charged in Count 1 of the Indictment, find Mario M. Contreras:

_____NOT GUILTY _____GUILTY

If you unanimously find Defendant, Mario Contreras, guilty of the above crime, have your foreperson write "guilty" in the above blank space, and consider Count 3 of this Verdict Form. Do not consider the Verdict Form for Count 2 if you unanimously find Defendant, Mario Contreras, guilty of Count 1. If you unanimously find Defendant, Mario Contreras, not guilty of the above charge, have your foreperson write "not guilty" in the above blank space. You then must consider Count 2 of this Verdict Form. If you are unable to reach a unanimous decision on the above charge, leave the space blank and decide whether the defendant is guilty of Count 2 of this Verdict Form.

COUNT 2

We, the jury in the above entitled action, as to the crime of voluntary manslaughter, as charged

in Count 2 of the Indictment, find Mario M. Contreras:

_____ NOT GUILTY _____ GUILTY

COUNT 3

We, the jury in the above entitled action, as to the crime of assault resulting in serious bodily injury, as charged in Count 3 of the Indictment, find Mario M. Contreras:

_____ NOT GUILTY _____ GUILTY

Have your foreperson sign and date the Verdict Form below.

Dated this _____ day of August, 2013.

Foreperson