

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED

OCT - 2 2013


CLERK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

KAMELIA NO MOCCASIN,
a/k/a Kamelia Shoulders,

Defendant.

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CR 13-30010-2-RAL

FINAL INSTRUCTIONS
TO JURY

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. The instructions I am about to give you now are in writing and will be available to you in the jury room.

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.

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, and the facts that have been stipulated—this 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 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

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. 6

The indictment in this case charges the Defendant with the crime of involuntary manslaughter. The Defendant has pleaded not guilty to this charge.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the Defendant is presumed to be innocent. Thus the Defendant, even though charged, begins the trial with no evidence against her. The presumption of innocence alone is sufficient to find the Defendant not guilty and can be overcome only if the Government proves, beyond a reasonable doubt, each element of the crimes charged.

There is no burden upon a defendant to prove that she is innocent. 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.

INSTRUCTION NO. 7

The crime of Involuntary Manslaughter, as charged in the Superseding Indictment, has elements, which are:

***One*, Cynthia Red Bird is dead;**

***Two*, that Kamelia No Moccasin caused the death of the victim, as charged;**

***Three*, the death of the victim occurred as a result of an act done by Kamelia No Moccasin during the commission of a lawful act done either in an unlawful manner or with wanton or reckless disregard for human life, which might produce death, that is asphyxiating Cynthia Red Bird by overlaying in a grossly negligent manner;**

***Four*, Kamelia No Moccasin knew that her conduct was a threat to the lives of others or it was reasonably foreseeable that the Defendant's conduct might be a threat to the lives of others; and**

***Five*, that the offense took place in Indian country.**

***Six*, that Kamelia No Moccasin is an Indian.**

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

INSTRUCTION NO. 8

To constitute the crime of involuntary manslaughter, the act done by the Defendant to cause the death must amount to gross negligence, and gross negligence must be proved beyond a reasonable doubt. A person acts in a grossly negligent manner when that person acts with a wanton or reckless disregard for human life. If the death in this case was due to ordinary negligence, the existence of gross negligence should not be found. Ordinary negligence is defined as doing some act which a reasonably prudent person would not do or the failure to do something which a reasonably prudent person would do under the circumstances.

The Government must also prove beyond a reasonable doubt that the Defendant had actual knowledge that her conduct was a threat to the lives of others, or had actual knowledge of such circumstances as could reasonably have enabled her to foresee the peril to which her act might subject others.

In determining whether or not the Defendant is guilty of Involuntary Manslaughter, you must measure her conduct against all of the circumstances existing at the place and time alleged in the indictment, and determine from these whether what the Defendant did was grossly negligent.

INSTRUCTION NO. 9

Intent 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 the determination of the Defendant's 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. 10

An act is done “knowingly” if the Defendant realized what she was doing and did not act through ignorance, mistake, or accident. You may consider the evidence of the Defendant’s acts and words, along with all the evidence, in deciding whether the Defendant acted knowingly.

INSTRUCTION NO. 11

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. 12

You have heard testimony that the defendant Kamelia No Moccasin made statements to law enforcement agents. It is for you to decide:

First, whether the defendant Kamelia No Moccasin made the statement; and

Second, if so, how much weight you should give to it.

In making these two decisions you should consider all of the evidence, including the circumstances under which a statement may have been made.

INSTRUCTION NO. 13

You have heard evidence that the witness Nathaniel Craig Red Bird has pleaded guilty to a crime which arose out of the same events for which the Defendant is on trial here. You must not consider that guilty plea as any evidence of this Defendant's guilt. You may consider that witness's guilty plea only for the purpose of determining how much, if at all, to rely upon that witness's testimony.

INSTRUCTION NO. 14

You may consider any evidence of flight by the Defendant if the Government proves the flight occurred, along with all of the evidence in this case and you may consider whether this evidence shows a consciousness of guilt and determine the significance to be attached to any such conduct.

Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to any such evidence are matters exclusively for you to decide. You are never required to make this inference, and evidence of flight is not sufficient in itself to establish the defendant's guilt, but evidence of flight is evidence from which you may, but are not required to, infer a consciousness of guilt. In your consideration of the evidence of flight you should consider that there may be reasons for this which are fully consistent with innocence.

INSTRUCTION NO. 15

You will note that the superseding indictment charges that the offense was committed “on or about” a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the case establishes beyond a reasonable doubt that the offense was committed on a date or dates reasonably near the dates alleged.

INSTRUCTION NO. 16

The superseding indictment in this case alleges that the Defendant is an Indian and that the alleged offense occurred in Indian country. The existence of those two factors is necessary in order for this Court to have jurisdiction over the crime charged in the superseding indictment.

Counsel for the Government, counsel for the Defendant, and the Defendant have agreed or stipulated that the Defendant is an Indian and that the place where the incident alleged in the superseding indictment is claimed to have occurred is in Indian country.

Counsel for the Government, counsel for the Defendant, and the Defendant have agreed or stipulated that Cynthia Red Bird died on August 14, 2011.

The Defendant has not, by entering this agreement or stipulation, admitted her guilt of the offense charged, and you may not draw any inference of guilt from the stipulation. The only effect of this stipulation is to establish the facts that the Defendant is an Indian, that the place where the alleged offense is claimed to have occurred is in Indian country, and that Cynthia Red Bird died on August 14, 2011.

INSTRUCTION NO. 17

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 or bailiff, 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, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Sixth, your verdict 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 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 or bailiff that you are ready to return to the courtroom.