UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ELIJAH BARSE, Defendant.	4:24-CR-40058-RAL FINAL JURY INSTRUCTIONS

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—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 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.

When you were instructed that evidence was received for a limited purpose, you must follow that instruction.

Some of you may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms. 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.

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 of any witness 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. 5

You have heard testimony from a person described as an expert. Persons who, by knowledge, skill, training, education or experience, have become expert 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.

INSTRUCTION NO. 6

You have heard evidence that the defendant had two state-court felony convictions for behavior while he was a juvenile, where the state courts proceeded as if he were an adult. The existence of prior felony convictions is not evidence that the defendant committed the crime of carjacking or of using, carrying or brandishing a firearm in relation to a crime of violence. You must not use the fact of two such prior convictions as any evidence of any of the wrongdoing alleged in the Indictment on November 18, 2023.

The prior convictions may only be used by you in evaluating the defendant's credibility. You are to determine how to evaluate the defendant's credibility and what weight, if any, to give to this evidence.

INSTRUCTION NO. 7

The Indictment in this case charges the defendant with one count of carjacking and one count of using, carrying, or brandishing a firearm during and in relation to a crime of violence. The defendant has pleaded not guilty to these charges.

The Indictment is simply the document that formally charges the defendant with the crimes for which he is on trial. The Indictment is not evidence of anything. 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. This presumption can be overcome only if the United States proved during the trial, beyond a reasonable doubt, each element of a crime charged.

Please remember that only the defendant, not anyone else, is on trial here, and that the defendant is on trial only for the crimes charged, not for anything else.

There is no burden upon the defendant to prove that he is innocent. Instead, the burden of proof remains on the United States throughout the trial.

INSTRUCTION NO. 8

The crime of carjacking, as charged in Count I of the indictment, has four essential elements which are:

One, the defendant, took a Subaru WRX bearing South Dakota license plate 1KE687 from the person of another;

Two, the defendant did so by means of force and violence and intimidation;

> "Intimidation" means doing something that would make an ordinary person fear bodily harm.

Three, the Subaru WRX had been transported, shipped or received in interstate or foreign commerce; and

Four, at or during the time the defendant took the Subaru WRX, the defendant intended to cause death or serious bodily harm.

> The intent to cause death or serious bodily harm is satisfied when, at the moment the defendant demanded or took control over the driver's automobile, the defendant possessed the intent to seriously harm or kill the driver if necessary to steal the car.
>
> Serious bodily harm means an injury that involves a substantial risk of death, extreme physical pain, long term and obvious disfigurement, the long term loss or impairment of a function of a bodily member or organ, or the long term loss or impairment of a mental function.

To find the defendant guilty of carjacking as charged in Count I of the indictment, the United States must prove all the essential elements beyond a reasonable doubt. If the United States proves all the essential elements beyond a reasonable doubt, you must find the defendant guilty. If the United States fails to prove any essential element beyond a reasonable doubt, you must find the defendant not guilty.

INSTRUCTION NO. 9

A person may be found guilty of carjacking even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of the carjacking.

In order to have aided and abetted the commission of a crime of carjacking a person must:

One, have known a carjacking was being committed or going to be committed;

Two, have had enough advance knowledge of the extent and character of the crime that he was able to make the relevant choice to walk away from the crime before all elements of carjacking were complete;

Three, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of carjacking; and

Four, have intended to cause death or serious bodily injury.

> The intent to cause death or serious bodily harm is satisfied when, at the moment the defendant demanded or took control over the driver's automobile, the defendant possessed the intent to seriously harm or kill the driver if necessary to steal the car.
>
> Serious bodily harm means an injury that involves a substantial risk of death, extreme physical pain, long term and obvious disfigurement, the long term loss or impairment of a function of a bodily member or organ, or the long term loss or impairment of a mental function.

For you to find the defendant guilty of carjacking by reason of aiding and abetting, the United States must prove beyond a reasonable doubt all of the elements of carjacking were committed by some person or persons and that the defendant aided and abetted that crime; otherwise you must find the defendant not guilty of this crime.

You may infer the defendant had the requisite advance knowledge of carjacking if you find the defendant failed to object or withdraw from actively participating in the commission of carjacking.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NO. 10

The crime of using, carrying, or brandishing a firearm during and in relation to a crime of violence as charged in Count II of the indictment has the following essential elements:

One, the defendant committed the offense of carjacking as charged in Count I of the Indictment;

Two, the defendant knowingly possessed a firearm in furtherance of the offense of carjacking as charged in Count I of the Indictment; and

> The phrase "in furtherance of" means furthering, advancing, or helping forward. This means the United States must prove that the defendant possessed the firearm with the intent that it advance, assist or help commit the crime, but the United States need not prove that the firearm actually did so.

Three, the defendant knowingly carried or knowingly brandished a firearm during and in relation to the offense of carjacking as charged in Count I of the Indictment.

> You may find that a firearm was "carried" during the commission of the crime if you find the defendant had a firearm on his person.
>
> The term "brandish" means to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

To find the defendant guilty of the offense of using, carrying or brandishing a firearm during a crime of violence as charged in Count II of the indictment, the United States must prove all the essential elements beyond a reasonable doubt. If the United States proves all the essential elements beyond a reasonable doubt, you must find the defendant guilty. If the United States fails to prove any essential element beyond a reasonable doubt, you must find the defendant not guilty.

The verdict form will guide you, if you find the defendant guilty on this offense, to determine if he is guilty of possessing the firearm in furtherance of the crime of violence by carrying, brandishing or both. You must be unanimous in your decision and use the beyond a reasonable doubt standard.

INSTRUCTION NO. 11

A person may be found guilty of using, carrying, or brandishing a firearm during and in relation to a crime of violence, as charged in Count II of the Indictment, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of the offense.

In order to have aided and abetted the crime of using, carrying, or brandishing a firearm during and in relation to a crime of violence, as charged in Count II of the Indictment, a person must:

One, have known a carjacking was being committed or going to be committed;

Two, have known that a firearm would be carried or brandished in furtherance of the offense of carjacking;

Three, have had enough advance knowledge of the extent and character of the crime that he was able to make the relevant choice to walk away from the crime before all elements of using, carrying, or brandishing a firearm during and in relation to a crime of violence were complete; and

Four, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of carjacking;

For you to find the defendant guilty of using, carrying, or brandishing a firearm during and in relation to a crime of violence by reason of aiding and abetting, the United States must prove beyond a reasonable doubt all of the elements of using, carrying, or brandishing a firearm during and in relation to a crime of violence were committed by some person or persons and that the defendant aided and abetted that crime; otherwise you must find the defendant not guilty of this crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NO. 12

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

INSTRUCTION NO. 13

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. 14

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 United States 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 court security officer, 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 smart phone, 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, Snapchat, LinkedIn, Instagram, YouTube, TikTok, X (formerly known as Twitter), or Truth Social, 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 court security officer that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ELIJAH BARSE, Defendant.	4:24-CR-40058-RAL VERDICT FORM

We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find the defendant Elijah Barse _____ (fill in either "not guilty" or "guilty") of Carjacking as charged in Count I of the Indictment.

(If you find the defendant "not guilty" of Count I, then you must find him "not guilty" of Count II. If you found the defendant "guilty" of Count I, then you must decide whether the defendant is guilty or not guilty of Count II.)

2. We find the defendant, Elijah Barse, _____ (fill in either "not guilty" or "guilty") of Using, Carrying or Brandishing a Firearm During and in Relation to a Crime of Violence as charged in Count II of the Indictment.

(Complete only if you find the defendant "guilty" on Count II.)
2.A. We find, beyond a reasonable doubt, that the defendant, Elijah Barse:
(place an "X" or check mark in the space provided next to the word or words that you find apply, using the beyond a reasonable doubt standard)

_____ carried

_____ brandished

a firearm in furtherance of the crime charged in Count I of the indictment.

Dated May _____, 2025.

_____
Foreperson