

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

UNITED STATES OF AMERICA,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> JULIAN BEAR RUNNER,  <p style="text-align: center;">Defendant.</p>	5:22-CR-50128-LRR  <b>FINAL INSTRUCTIONS TO THE JURY</b>
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INSTRUCTION NO. 12 – INTRODUCTION

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

The instructions I am about to give you, as well as the instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial and during the trial are not repeated here.

INSTRUCTION NO. 13 – WIRE FRAUD

For you to find Bear Runner guilty of the offenses of wire fraud charged in Counts 1 through 6 of the Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt as to each count:

**One, the defendant, Julian Bear Runner, voluntarily and intentionally devised or made up a scheme to defraud the Oglala Sioux Tribe out of money or property by fraudulently submitting a voucher claiming he was entitled to travel funds when he was not travelling and thereby did cause a check to be written on the Oglala Sioux Tribe's bank account at the First National Bank in Gordon, Nebraska, which he then deposited or cashed knowing that he was not entitled to the funds; and**

The phrase "scheme to defraud" includes any plan or course of action intended to deceive or cheat another out of money, property or property rights by employing material falsehoods, concealing material facts, or omitting material facts. It also means the obtaining of money or property from another by means of material false representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

A statement or representation is "false" when it is untrue when made or effectively conceals or omits a material fact.

A fact, falsehood, representation, or promise is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether to engage or not to engage in a particular transaction. However, whether a fact, falsehood, representation or promise is "material" does not depend on whether the person was actually deceived.

**Two, the defendant did so with the intent to defraud; and**

To act with "intent to defraud" means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property to another or bringing about some financial gain to oneself or another to the detriment of a third party.

**Three, the defendant used, or caused to be used, an interstate wire communication, that is, electronic wire communication caused by depositing or cashing checks and causing the withdrawal of funds from**

## INSTRUCTION NO. 13 CONTINUED

**the Oglala Sioux Tribe's bank account, in furtherance of, or in an attempt to carry out, some essential step in the scheme.**

It is not necessary that the use of the interstate wire communication by the participants themselves be contemplated or that the defendant actually sent the interstate wire communication or specifically intended that the interstate wire communication be used or sent. It is sufficient if the interstate wire communication was in fact used to carry out the scheme and the use of a interstate wire communication by someone was reasonably foreseeable.

It is not necessary that the prosecution prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme, that the wire communication was itself false or fraudulent, that the alleged scheme actually succeeded in defrauding anyone, or that the wire communication was intended as the specific or exclusive means of accomplishing the alleged fraud.

It is not necessary that the prosecution prove that the wire communication was an essential part of the scheme. A wire communication may be routine or sent for a legitimate purpose so long as it assists in carrying out the fraud.

Each separate wire communication in furtherance of the scheme to defraud constitutes a separate offense. The actions charged are set forth as follows:

Count	Date	Method	Amount
1	3/2/2019	Check # 212747	\$1,204.20
2	6/21/2019	Check # 216556	\$1,724.96
3	7/2/2019	Check # 216599	\$1,657.50
4	7/13/2019	Check # 217942	\$2,369.69
5	9/23/2019	Check # 219166	\$1,948.51
6	10/18/2019	Check # 218908	\$2,238.01

For you to find Bear Runner guilty of the offenses charged in Counts 1 through 6 of the Indictment, the prosecution must prove all three of the

INSTRUCTION NO. 13 CONTINUED

essential elements beyond a reasonable doubt as to each count. If you find that the prosecution has not proved each of the elements as to any of the offenses charged in Counts 1 through 6 of the Indictment, then you must find Bear Runner not guilty of that count.

INSTRUCTION NO. 14 – LARCENY

For you to find Julian Bear Runner guilty of larceny, as charged in Count 7 of the Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

**One, or about between January 2019 and January 2020, the defendant, Julian Bear Runner, unlawfully took and carried away the personal property of the Oglala Sioux Tribe; and**

**Two, that the defendant intended to steal or purloin the personal property; and**

To “steal” or “purloin” means to take with the intent to deprive the owner permanently or temporarily of the rights and benefits of ownership.

**Three, the personal property had a value in excess of \$1,000; and**

**Four, the defendant is an Indian; and**

A person is considered an "Indian" if that person has some Indian blood and if that person is recognized as an Indian. To determine whether the person is recognized as an Indian, you may consider the following factors:

- 1) Whether the person is enrolled in a tribe.
- 2) Whether the government has provided the person with assistance reserved only to Indians.
- 3) Whether the person enjoys the benefits of tribal affiliation.
- 4) Whether the person is socially recognized as an Indian because he lives on the reservation and participates in Indian social life.

It is not necessary that all these factors be present in order for a person to be considered an Indian.

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

The term "Indian country," includes: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian

INSTRUCTION NO. 14 CONTINUED

titles to which have not been extinguished, including rights-of-way running through the same.

For you to find Bear Runner guilty of the offense charged in Count 7 of the Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. Otherwise, you must find Bear Runner not guilty of the offense charged in Count 7 of the Indictment.

INSTRUCTION NO. 15 – EMBEZZLEMENT AND THEFT FROM INDIAN TRIBAL ORGANIZATION

For you to find Julian Bear Runner guilty of embezzlement and theft from an Indian tribal organization, as charged in Count 8 of the Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

**One, the defendant, Julian Bear Runner, embezzled, stole, or willfully misapplied money or property belonging to the Oglala Sioux Tribe; and**

To embezzle means to knowingly, voluntarily and intentionally take, or convert to one's own use, the property of another which came into the defendant's possession lawfully, by virtue of some office, employment, or position of trust which the defendant has.

To "misapply" means to voluntarily and intentionally use the funds or property of the Oglala Sioux Tribe knowing that such use is unauthorized, unjustifiable or wrongful. Misapplication includes the wrongful taking or use of the money or property of the Oglala Sioux Tribe by its agent for his own benefit or the use or benefit of some other person.

**Two, the defendant did so with intent to injure or defraud the Oglala Sioux Tribe; and**

To act with "intent to defraud" means to act with intent to deceive or cheat, for the purpose of causing a financial loss to someone else or bringing about a financial gain to the defendant or another. A person acts with intent to defraud if he acts knowingly and if the natural result of his conduct would be to defraud the organization, even though this may not have been his motive.

**Three, the Oglala Sioux Tribe was an Indian tribal organization.**

An "Indian tribal organization" is any tribe, band, or community of Indians which is subject to the laws of the United States relating to Indian affairs or any corporation, association, or group which is organized under any such laws.

For you to find Bear Runner guilty of the offense charged in Count 8 of the Indictment, the prosecution must prove all three of the essential elements



INSTRUCTION NO. 15 CONTINUED

beyond a reasonable doubt. Otherwise, you must find Bear Runner not guilty of the offense charged in Count 8 of the Indictment.

## INSTRUCTION NO. 16 – IMPEACHMENT

In Instruction No. 6, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight, if any, you think it deserves.

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.

INSTRUCTION NO. 17 – PRESUMPTION OF INNOCENCE AND BURDEN OF  
PROOF

The presumption of innocence means that the defendant is presumed to be not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of the offenses charged against him.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict

This burden means that you must find the defendant not guilty of an offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

## INSTRUCTION NO. 18 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense, and not doubt based on speculation.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence, or lack of evidence, in the case before making a decision.
- Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

## INSTRUCTION NO. 19 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdicts, when you return just verdicts based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all of the evidence bearing on each element before you.
- Take all the time that you feel is necessary.

Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach your verdicts just to be finished with the case.

INSTRUCTION NO. 20 – DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdicts:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is guilty or not guilty. If the defendant is guilty, I will decide what the sentence should be.
- If it is necessary to communicate with me, send me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdicts.
- When you have reached your verdicts, the foreperson will advise the CSO that you are ready to return to the courtroom.

Dated April 4, 2024.

A handwritten signature in black ink, appearing to read "Linda R. Reade", written in a cursive style.

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LINDA R. READE, JUDGE  
UNITED STATES DISTRICT COURT

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We, the Jury, unanimously find the defendant, **Julian Bear Runner**, as follows:

<b>COUNT 1: WIRE FRAUD</b>	<b>VERDICT</b>
On the charge of “wire fraud,” as charged in Count 1 and explained in Instruction No. 13, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

<b>COUNT 2: WIRE FRAUD</b>	<b>VERDICT</b>
On the charge of “wire fraud,” as charged in Count 2 and explained in Instruction No. 13, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

<b>COUNT 3: WIRE FRAUD</b>	<b>VERDICT</b>
On the charge of “wire fraud,” as charged in Count 3 and explained in Instruction No. 13, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

<b>COUNT 4: WIRE FRAUD</b>	<b>VERDICT</b>
On the charge of “wire fraud,” as charged in Count 4 and explained in Instruction No. 13, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

<b>COUNT 5: WIRE FRAUD</b>	<b>VERDICT</b>
On the charge of “wire fraud,” as charged in Count 5 and explained in Instruction No. 13, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

<b>COUNT 6: WIRE FRAUD</b>	<b>VERDICT</b>
On the charge of “wire fraud,” as charged in Count 6 and explained in Instruction No. 13, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

<b>COUNT 7: LARCENY</b>	<b>VERDICT</b>
On the charge of “larceny” in an amount in excess of \$1,000, as charged in Count 7 and explained in Instruction No. 14, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

<b>COUNT 8: EMBEZZLEMENT AND THEFT FROM AN INDIAN TRIBAL ORGANIZATION</b>	<b>VERDICT</b>
On the charge of “embezzlement and theft from an Indian tribal organization,” as charged in Count 8 and explained in Instruction No. 15, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

**Please sign and date the Verdict Form.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson