

FILED

SEP 28 2017

[Signature]
CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>ZACHERY KING EDWARD CONNER, a/k/a Zachary Conner,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">4:17-CR-40015-01-KES</p> <p style="text-align: center;">FINAL INSTRUCTIONS TO THE JURY</p>
--	---

TABLE OF CONTENTS

FINAL INSTRUCTIONS

FINAL INSTRUCTION NO. 1 – INTRODUCTION 1

FINAL INSTRUCTION NO. 2 – INTERFERENCE WITH COMMERCE BY MEANS OF ROBBERY 2

FINAL INSTRUCTION NO. 3 – BRANDISHING A FIREARM DURING A FEDERAL CRIME OF VIOLENCE 4

FINAL INSTRUCTION NO. 4 – POSSESSION OF A FIREARM BY A CONVICTED FELON 5

FINAL INSTRUCTION NO. 5 – POSSESSION 7

FINAL INSTRUCTION NO. 6 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF 8

FINAL INSTRUCTION NO. 7 – REASONABLE DOUBT 9

FINAL INSTRUCTION NO. 8 – IMPEACHMENT 10

FINAL INSTRUCTION NO. 9 – DUTY TO DELIBERATE 11

FINAL INSTRUCTION NO. 10 – DUTY DURING DELIBERATIONS 12

FINAL INSTRUCTION NO. 1 – 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 preliminary 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 are not repeated here.

**FINAL INSTRUCTION NO. 2 – INTERFERENCE WITH COMMERCE BY
MEANS OF ROBBERY**

For you to find Zachery King Edward Conner guilty of interference with commerce by means of robbery, as charged in Count 1 of the Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, that on or about December 7, 2016, at Yankton, in the District of South Dakota, Conner knowingly robbed Casey’s General Store;

Two, that the robbery involved United States currency commonly referred to as “cash”;

“Robbery” means the unlawful taking or obtaining of personal property from the person or in the presence of another, against the person’s will. The unlawful taking or obtaining must occur by means of actual force, threatened force, violence, or fear of injury, whether immediately or in the future, to the person’s body, property or property in the person’s custody or possession.

Three, that the United States currency was in the custody or possession of an employee of Casey’s General Store in Yankton, South Dakota; and

Four, that Conner’s action obstructed, delayed, or affected commerce in some way or degree.

The term “commerce” includes, among other things, travel, trade, transportation, and communication. And, it also means (1) all commerce between any point in one State and any point outside of that State, and (2) all commerce between points within the same State through any place outside of that State.

The phrase “obstructed, delayed, or affected commerce” in element four means any action which, in any manner or to any degree interferes with, changes, or alters the movement or transportation or flow of goods, merchandise, money, or other property in commerce.

In considering the fourth element, you must decide whether there is an actual effect on commerce. If you decide that there was any effect at all on commerce, then that is enough to satisfy this element. The effect can be minimal. Such effect can be proved by one or more of the following: depletion of the assets of a business operating in commerce, the

temporary closing of a business to recover from the robbery or business slowdown as a result of the robbery.

It is not necessary for the prosecution to show that Conner actually intended or anticipated an effect on commerce. All that is necessary is that commerce was affected as a natural and probable consequence of the Conner's actions.

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

**FINAL INSTRUCTION NO. 3 – BRANDISHING A FIREARM DURING A
FEDERAL CRIME OF VIOLENCE**

For you to find Zachery King Edward Conner guilty of brandishing a firearm during a federal crime of violence, as charged in Count 2 of the Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, that on or about December 7, 2016, Conner, committed a crime of violence, namely the crime of Interference with Commerce by Means of Robbery; and

Two, that Conner knowingly brandished a firearm, to wit: a Bersa .380 caliber semi-automatic handgun bearing serial no. 895440, in furtherance of that crime.

The term “brandish” means, with respect to a firearm, 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.

The term “firearm” means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

The phrase “in furtherance of” should be given its plain meaning, that is, the act of furthering, advancing, or helping forward. The phrase “in furtherance of” is a requirement that Conner brandish the firearm with the intent that it advance, assist or help commit the crime, not that it actually did so.

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

FINAL INSTRUCTION NO. 4 – POSSESSION OF A FIREARM BY A CONVICTED FELON

For you to find Zachery King Edward Conner guilty of possession of a firearm by a convicted felon, as charged in Count 3 of the Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, that Conner had been convicted of a crime punishable by imprisonment for more than one year;

The parties have agreed that Conner has been convicted of a crime punishable by imprisonment for more than one year under the laws of the State of South Dakota and you must consider the first element as proven.

Two, that on or about December 7, 2016, in the District of South Dakota, Conner, knowingly possessed a firearm, to wit: a Bersa .380 caliber semi-automatic handgun bearing serial no. 895440; and

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

The term "firearm" means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

Three, that the firearm was transported across a state line at some time during or before Conner's possession of it.

If you have found beyond a reasonable doubt that the firearm in question was manufactured in a state other than South Dakota and that the defendant possessed that firearm in the State of South Dakota, then you may, but are not required to, find that it was transported across a state line.

The United States is not required to prove that the defendant knew the firearm had crossed a state line.

If all of these elements have been proved beyond a reasonable doubt as to Conner, then you must find Conner guilty of the crime charged in Count 3 of the Indictment; otherwise, you must find Conner not guilty of that crime.

FINAL INSTRUCTION NO. 5 – POSSESSION

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 and also sole as well as joint possession.

In addition, mere presence where the firearm was found or mere physical proximity to the firearm is insufficient to establish that the defendant had “possession” of the firearm. The defendant’s knowledge of the presence of the firearm, at the same time the defendant has control over the firearm or the place in which it was found, is required. Thus, in order to establish “possession” of a firearm, in addition to knowledge of the presence of the firearm, the prosecution must establish that, at the same time, (a) the defendant intended to exercise control over the firearm or place in which it was found; (b) the defendant had the power to exercise control over the firearm or place in which it was found; and (c) the defendant knew that he had the power to exercise control over the firearm or place in which it was found.

Constructive possession requires knowledge of an object, the ability to control it, and the intent to do so.

FINAL INSTRUCTION NO. 6 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely 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 an offense 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 the offenses charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of the offenses.

FINAL INSTRUCTION NO. 7 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- 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 in the case before making a decision.
- 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.

FINAL INSTRUCTION NO. 8 – IMPEACHMENT

In Preliminary 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 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.

FINAL INSTRUCTION NO. 9 – 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 verdict, when you return a just verdict 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 a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 10 – DUTY DURING DELIBERATIONS

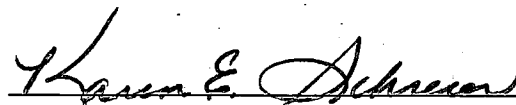
You must follow certain rules while conducting your deliberations and returning your verdict:

- 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.
- Communicate with me by sending 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.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

DATED September 28, 2017.

BY THE COURT:

A handwritten signature in cursive script, reading "Karen E. Schreier", is written over a horizontal line.

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE