

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. CLAYTON FIRE THUNDER, Defendant.</p>	<p>5:24-CR-50072-KES FINAL INSTRUCTIONS TO THE JURY</p>
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VERDICT FORM

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 – INVOLUNTARY MANSLAUGHTER

For you to find Clayton Fire Thunder guilty of the offense of Involuntary Manslaughter, as charged in Count 4 of the Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that on or about September 15, 2022, Fire Thunder caused the death of Nyvelle Quick Bear;

Two, Fire Thunder did so in the commission of a lawful act which might produce death when done in an unlawful manner or without due caution and circumspection, that is, possessing a firearm in a grossly negligent manner which resulted in the death of Nyvelle Quick Bear;

Three, Fire Thunder acted grossly negligently in that he acted with a wanton or reckless disregard for human life, knowing that his conduct was a threat to the lives of others or having knowledge of such circumstances as could reasonably have enabled him to foresee the peril to which his act might subject others;

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 that a reasonably prudent person would not do or the failure to do something that 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 his conduct was a threat to the lives of others, or had actual knowledge of such circumstances as could reasonably have enabled him to foresee the peril to which his acts might subject others.

In determining whether or not the defendant is guilty of Involuntary Manslaughter, you must measure his 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.

Four, the killing occurred near Pine Ridge, South Dakota;

And five, Fire Thunder is an Indian.

The government must prove beyond a reasonable doubt that the defendant is an Indian in order for the defendant to be proven guilty of the offense charged. The government must prove:

One, that the defendant has some degree of Indian blood; and

Two, that the defendant is recognized as an Indian by a tribe or the federal government, or both.

In determining whether the defendant is recognized as an Indian by a tribe or the federal government, you may consider the following factors among others. No one factor is dispositive:

1. Whether the defendant is an enrolled member of a tribe or band;
2. Whether a government recognizes the defendant as an Indian by providing assistance reserved only to Indians;
3. Whether the defendant enjoys the benefits of tribal affiliation; or
4. Whether the defendant lives on a reservation or participates in Indian social life.

It is not necessary that all of these factors be present. Rather, the jury is to consider all of the evidence in determining whether the government has proved beyond a reasonable doubt that the defendant is an Indian.

For you to find Fire Thunder guilty of the offense charged in Count 4 of the Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. If you find that the prosecution has not proved each of the elements, then you must find Fire Thunder not guilty of Count 4 charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 3 – FALSE STATEMENT

For you to find Clayton Fire Thunder guilty of the offense of False Statement, as charged in Counts 5 and 6 of the Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, Fire Thunder knowingly and intentionally made a statement or representation to an agency of the United States of America that he did not have a firearm on or about September 15, 2022, when Fire Thunder then and there well knew that he had a firearm and used it to shoot into Justin Bradford's residence;

Each separate statement alleged constitutes a separate offense. The date of each statement and to whom it was said is set forth as follows:

Count	Date	To whom
5	On or about October 16, 2023	Zane Nevala
6	On or about May 28, 2024	Brent Bixenman

Two, the statement or representation was false or fraudulent;

A statement or representation is “false” if untrue when made.

A statement or representation is “fraudulent” if the defendant made it with the intent to deceive.

Three, the statement or representation concerned a material fact;

A “material fact” is a fact that would naturally influence or is capable of influencing a decision of the agency. Whether a statement or representation is “material” does not depend on whether the agency was actually deceived or misled.

Four, the statement or representation was made about a matter within the jurisdiction of the Federal Bureau of Investigation;

You may find that this element has been satisfied if you find that the Federal Bureau of Investigation’s function includes investigating violent crime in Indian Country.

And *five*, Fire Thunder knew it was untrue when he made the statement or representation.

For you to find Fire Thunder guilty of the offenses charged in Counts 5 and 6 of the Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. If you find that the prosecution has not proved each of the elements, then you must find Fire Thunder not guilty of Counts 5 and 6 charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 4 – 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.

You have heard that a witness was convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give his testimony, if any.

You have heard that a witness pleaded guilty to a crime that 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 the defendant’s guilt. You may consider a witness’s guilty plea only for the purpose of determining how much, if at all, to rely upon that witness’s testimony.

You have also heard evidence that a witness has made a plea agreement with the prosecution. The witness’s testimony was received in evidence and may be considered by you. You may give the witness’s testimony such weight as you think it deserves. Whether or not the witness’s testimony may have been influenced by the plea agreement or the prosecution’s promise is for you to determine. A witness’s guilty plea cannot be considered by you as any evidence of the defendant’s guilt. A witness’s guilty plea can be

considered by you only for the purpose of determining how much, if at all, to rely upon the witness's testimony.

You have heard evidence that a witness has made a plea agreement with the prosecution that the witness may receive a sentence reduction if he provides substantial assistance to the government in the prosecution of other defendants. If the prosecutor handling this witness's case believes he provided substantial assistance, that prosecutor can file in the court in which the charges are pending against this witness a motion to reduce his sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

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 of 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. 5 – PRESUMPTION OF INNOCENCE AND BURDEN
OF PROOF

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

- This presumption means that you must put aside all suspicion that might arise from a defendant's arrest, the charges, or the fact that he is here in court.
- This presumption remains with a defendant throughout the trial.
- This presumption is enough, alone, for you to find a 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 a defendant to prove his innocence.
- This burden means that a defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if a 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 Fire Thunder 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.

FINAL INSTRUCTION NO. 6 – 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 a defendant, keeping in mind that a 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 a 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. 7 – 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 a defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that a 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. 8 – 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 a defendant is guilty or not guilty. If a 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 a defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against a 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 January 30, 2025.

BY THE COURT:



KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

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> CLAYTON FIRE THUNDER, <p style="text-align: center;">Defendant.</p>	5:24-CR-50072-KES VERDICT
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We, the Jury, unanimously find the defendant, **Clayton Fire Thunder**, as follows:

INVOLUNTARY MANSLAUGHTER		VERDICT
Step 1:	On the charge of “Involuntary Manslaughter” as explained in Final Instruction No. 2, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

FALSE STATEMENT		VERDICT
Step 2:	On the charge in Count 5 of “False Statement” as explained in Final Instruction No. 3, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

FALSE STATEMENT		VERDICT
Step 3:	On the charge in Count 6 of “False Statement” as explained in Final Instruction No. 3, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

Please sign and date the Verdict Form.

Date

Foreperson