

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOEY KILLS PLENTY,

Defendant.

3:25-CR-30101-ECS

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 these 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, 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.

INSTRUCTION NO. 5

The value of identification testimony depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later. Eyewitness identification must be evaluated with particular care.

In evaluating such testimony you should consider all of the factors mentioned in these instructions concerning your assessment of the credibility of any witness, and you should also consider, in particular, whether the witness had an adequate opportunity to observe the person in question at the time of the offense and whether the identification is reliable. You may consider, in that regard, such matters as the witness's eyesight and ability to observe the person in question under the circumstances, the length of time the witness had to observe the person in question, any intoxication or other impairment of the witness at the time the witness observed the person in question, the prevailing conditions at that time in terms of lighting, visibility or distance and the like, whether the witness had known or observed the person at earlier times, and any description provided by the witness after the event and before identifying the Defendant. Factors that bear on the likelihood of misidentification include the passage of time between the witness's exposure to the person in question and identification of the Defendant, whether the witness was under stress when he or she first encountered the person in question, whether the person in question carried a weapon, and the race of the person in question and the witness.

You should also consider whether the identification made by the witness after the offense was the product of his or her own recollection. You may consider, in that regard, the strength of the identification, and the circumstances under which the identification was made, keeping in mind that a witness may be certain but mistaken.

If the identification by the witness may have been influenced by the circumstances under which the Defendant was presented to him or her for identification, you should scrutinize the identification with great care.

You may take into account any occasions in which the witness failed to make an identification of the Defendant, or made an identification that was inconsistent with his or her identification at trial. The government has the burden of proving identity beyond a reasonable doubt. It is not essential that the witness be free from doubt as to the correctness of the identification. However you, the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may find him guilty. If you are not convinced beyond a reasonable doubt that the Defendant was the person who committed the crime, you must find the Defendant not guilty.

INSTRUCTION NO. 6

The testimony of a witness may be discredited or, as we sometimes say, impeached by showing that he or she previously made statements which are different than or inconsistent with his or her testimony here in Court. The earlier inconsistent or contradictory statements are admissible only to discredit or impeach the credibility of the witness and not to establish the truth of these earlier statements made somewhere other than here during this trial. It is the province of the jury to determine the credibility of a witness who has made prior inconsistent or contradictory statements.

INSTRUCTION NO. 7

I instruct you that you must presume the Defendant to be innocent of the crimes charged. Thus, the Defendant, although accused of crimes in the Indictment, began the trial with a “clean slate” with no evidence against him. This presumption means that you must put aside all suspicion that might arise from the Defendant’s arrest, the charge, or the fact that he is here in court. The Indictment, as you already know, is not evidence of any kind. The Defendant is not on trial for any act or crime not contained in the Indictment. The law permits nothing but legal evidence presented before the jury in Court to be considered in support of any charge against a defendant. The presumption of innocence alone, therefore, is sufficient to acquit the Defendant.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes on any defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence by cross-examining the witnesses for the Government.

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is based upon reason and common sense – the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

Unless the Government proves, beyond a reasonable doubt, that the Defendant committed each and every element of the offense charged in the Indictment, you must find him not guilty of the offense. If the jury views the evidence as reasonably permitting either of two conclusions – one of innocence, the other of guilt – the jury must find the Defendant not guilty.

INSTRUCTION NO. 8

The Indictment in this case charges the Defendant with three different crimes. Count I charges that the Defendant committed the crime of Assault With a Dangerous Weapon. Count II charges that the Defendant committed the crime of Assault Resulting in Serious Bodily Injury. Count III charges that the Defendant committed the crime of Using and Carrying a Firearm During and in Relation to a Crime of Violence. The Defendant has pleaded not guilty to each of those 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. The Defendant began the trial with a clean slate with no evidence against him.

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. Keep in mind that each count charges a separate crime. You must consider each count separately and return a verdict for each count.

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the United States throughout the trial. The fact that the Defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

INSTRUCTION NO. 9

The crime of assault with a dangerous weapon, as charged in Count I of the Indictment, has four elements:

One, on or about August 13, 2025, the Defendant assaulted Gunnar Stead with the specific intent to cause bodily harm;

Two, the Defendant used a dangerous weapon, specifically a firearm;

Three, the assault took place in Todd County, in Indian country, in the District of South Dakota; and

Four, the Defendant is an Indian.

“Assault” means any intentional and voluntary attempt or threat to injure another person, combined with the apparent present ability to do so, which is sufficient to put the other person in fear of immediate bodily harm or any intentional and voluntary harmful and offensive touching of another person without justification or excuse.

“Dangerous weapon” means an object with the capacity to endanger life or inflict bodily harm and used in a manner likely to do so.

“Firearm” means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.

“Intent to inflict bodily harm” means knowingly and intentionally doing an act for the purpose of causing another person to suffer bodily harm.

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

INSTRUCTION NO. 10

If your verdict as to the crime charged in Count I of the Indictment is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count I of the Indictment, you should record that decision on the verdict form and go on to consider whether the Defendant is guilty of simple assault. The crime of simple assault has three essential elements, which are:

One, on or about August 13, 2025, the Defendant assaulted Gunnar Stead;

Two, the assault happened in Todd County, in Indian Country, in the District of South Dakota; and

Three, the Defendant is an Indian.

“Assault” means any intentional and voluntary attempt or threat to injure another person, combined with the apparent present ability to do so, which is sufficient to put the other person in reasonable fear of immediate bodily harm or any intentional and voluntary harmful and offensive touching of another person without justification or excuse.

For you to find the Defendant guilty of this crime of simple assault, a lesser-included offense under Count I as charged in the Indictment, the Government must prove all of these elements beyond a reasonable doubt; otherwise you must find the Defendant not guilty of this crime of simple assault, a lesser-included offense under Count I as charged in the Indictment.

INSTRUCTION NO. 11

The crime of assault resulting in serious bodily injury, as charged in Count II of the Indictment, has four elements:

One, on or about August 13, 2025, the Defendant assaulted Gunnar Stead;

Two, as a result of that assault Gunnar Stead suffered serious bodily injury;

Three, the assault happened in Todd County, in Indian country, in the District of South Dakota; and

Four, the Defendant is an Indian.

“Assault” means any intentional and voluntary attempt or threat to injure another person, combined with the apparent present ability to do so, which is sufficient to put the other person in fear of immediate bodily harm or any intentional and voluntary harmful and offensive touching of another person without justification or excuse.

“Serious bodily injury” means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the functions of a bodily member, organ or mental faculty.

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

INSTRUCTION NO. 12

If you should unanimously find the defendant “Not Guilty,” of the crime of assault resulting in serious bodily injury as charged in Count II of the Indictment, or if, after reasonable efforts, you are unable to reach a verdict as to the crime charged in Count II of the Indictment, then you must proceed to determine whether the Defendant is guilty or not guilty as to the crime of assault by striking, beating, or wounding under this Instruction.

The crime of assault by striking, beating, or wounding, a lesser included offense of the crime of assault resulting in serious bodily injury as charged in Count II of the indictment, has three essential elements, which are:

***One*, that on or about August 13, 2025, the Defendant without just cause or excuse, voluntarily and intentionally assaulted Gunnar Stead by striking, beating, or wounding him;**

***Two*, that the Defendant is an Indian; and**

***Three*, that the offense happened in Todd County, in Indian country, in the District of South Dakota.**

If all of these elements have been proved beyond a reasonable doubt as to the Defendant, then you must find the Defendant guilty of the crime of assault by striking, beating, or wounding; otherwise you must find the Defendant not guilty of this crime.

INSTRUCTION NO. 13

The crime of possessing a firearm in furtherance of a crime of violence as charged in Count III of the Indictment has two elements:

***One*, the Defendant committed the crime of Assault With a Dangerous Weapon as charged in Count I of the Indictment; and**

***Two*, the Defendant knowingly brandished, discharged, used, or carried a firearm during and in relation to the crime of Assault With a Dangerous Weapon as charged in Count I of the Indictment.**

“Firearm” means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.

The phrase “used a firearm” means that the firearm was actively employed in the course of the commission of the Assault With a Dangerous Weapon. You may find that a firearm was used during the commission of the crime of Assault With a Dangerous Weapon if you find that it was brandished, discharged, or fired.

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.

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

INSTRUCTION NO. 14

Counts I and II of the Indictment in this case allege that the offenses occurred in Indian country and that the Defendant is an Indian. The existence of those two factors is necessary for this Court to have jurisdiction over the crimes charged in the Indictment.

The Court has determined that the geographical area that has been testified to is in fact Indian country. You as the jury must determine whether Counts I and II as alleged occurred at that particular location.

To determine if the Defendant is an Indian as alleged in Counts I and II of the Indictment, there are two elements:

1. The Defendant has some degree of Indian blood; and
2. The Defendant is recognized as an Indian person by a tribe or the federal government or both.

In determining whether the Defendant is recognized as an Indian person by a tribe or the federal government, you may consider the following factors, among others

- i. Whether the Defendant is an enrolled member of a tribe or band.
- ii. Whether a government recognizes the Defendant as an Indian by providing assistance reserved only to Indians.
- iii. Whether the Defendant enjoys benefits of tribal affiliation.
- iv. Whether the Defendant lives on a reservation or participates in Indian social life.

It is not necessary that all of these factors be present. No one factor is dispositive. The jury is to consider all of the evidence in determining whether the United States has proved beyond a reasonable doubt that the Defendant is an Indian.

INSTRUCTION NO. 15

Intent or knowledge 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 a determination of the Defendant's intent or knowledge.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. The United States is not required to prove that the Defendant knew that his acts or omissions were unlawful.

INSTRUCTION NO. 16

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. 17

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 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. 18

The defendant in a criminal case has an absolute right under our Constitution not to testify.

The fact that Mr. Kills Plenty did not testify must not be discussed or considered in any way when deliberating and in arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his privilege under the Constitution and did not testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or of producing any evidence.

INSTRUCTION NO. 19

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. 20

The Indictment charges the offense were 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 evidence in the case establishes beyond a reasonable doubt that the offense in question was committed on a date reasonably near the date alleged.

INSTRUCTION NO. 21

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, and on each count of the Indictment—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 smartphone 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, 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
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JOEY KILLS PLENTY, Defendant.	3:25-CR-30101-ECS VERDICT FORM
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find the Defendant, Joey Kills Plenty, _____ (fill in either “not guilty” or “guilty”) of assault with a dangerous weapon as charged in Count I of the Indictment.

1A. Answer if, and only if, you found the Defendant “not guilty” or you are not able to reach a verdict after all reasonable efforts as to the charge of assault with a dangerous weapon, otherwise leave this blank.

We find the Defendant, Joey Kills Plenty, _____ (fill in either “not guilty” or “guilty”) of the lesser included offense of simple assault.

2. We find the Defendant, Joey Kills Plenty, _____ (fill in either “not guilty” or “guilty”) of assault resulting in serious bodily injury as charged in Count II of the Indictment.

2A. Answer if, and only if, you found the Defendant “not guilty” or you are not able to reach a verdict after all reasonable efforts as to the charge of assault resulting in serious bodily injury, otherwise leave this blank.

We find the Defendant, Joey Kills Plenty, _____ (fill in either “not guilty” or “guilty”) of the lesser included offense of assault by striking, beating, or wounding.

3. We find the Defendant, Joey Kills Plenty, _____ (fill in either “not guilty” or “guilty”) of using a firearm during and in relation to a crime of violence as charged in Count III of the Indictment. *(If you have found the Defendant “not guilty” of Count I Assault with a Dangerous Weapon, then you must find him “not guilty” of Count III. If you find the Defendant “guilty” of Count I Assault with a Dangerous Weapon, then you must decide whether the Defendant is “not guilty” or “guilty” of Count III.)*

3A. Answer if and only if you find the Defendant “guilty” of Using a Firearm During and in Relation to a Crime of Violence as charged in Count III of the Indictment.

We find, beyond a reasonable doubt, that the Defendant, Joey Kills Plenty: (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

_____ discharged

a firearm in connection with commission of the crime charged in Count I.

Dated May ____, 2026.

Foreperson