UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. FRANK WHITE THUNDER, Defendant.	3:24-CR-30056-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 and 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. You should judge the testimony of the Defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 5

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. 6

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 Superseding 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 Superseding 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 Superseding 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 Superseding 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. 7

The Superseding Indictment in this case charges the Defendant with six different crimes. Count I charges that the Defendant committed the crime of Second Degree Murder. Count II charges that the Defendant committed the crime of Assault With a Dangerous Weapon. Count III charges that the Defendant committed the crime of Assault Resulting in Serious Bodily Injury. Count IV charges that the Defendant committed the crime of Robbery and Aiding and Abetting. Count V charges that the Defendant committed the crime of Commission of a Crime of Violence While Failing to Register as a Sex Offender. Count VI charges that the Defendant committed the crime of Failure to Register as a Sex Offender. The Defendant has pleaded not guilty to each of those charges.

The Superseding Indictment is simply the document that formally charges the Defendant with the crimes for which he is on trial. The Superseding 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.

The presumption of innocence alone is sufficient to find the Defendant not guilty and 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. 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.

INSTRUCTION NO. 8

The crime of murder in the second degree, as charged in Count I of the Superseding Indictment, has four elements:

***One*, on or about October 22, 2024, in Todd County, South Dakota, the Defendant unlawfully killed Andrew Two Eagle;**

***Two*, the Defendant did so with malice aforethought;**

As used in these instructions, "malice aforethought" means an intent, at the time of a killing, willfully to take the life of a human being, or an intent willfully to act in callous and wanton disregard of the consequences to human life. But "malice aforethought" does not necessarily imply any ill will, spite or hatred towards the individual killed.

In determining whether Andrew Two Eagle was unlawfully killed with malice aforethought, you should consider all the evidence concerning the facts and circumstances preceding, surrounding, and following the killing which tend to shed light upon the question of intent.

***Three*, the offense occurred in Indian country; and**

***Four*, the Defendant is an Indian.**

If all of these elements have been proved beyond a reasonable doubt as to the Defendant and if it has further been proved beyond a reasonable doubt that the Defendant was not acting in self-defense or defense of others as defined in Instruction No. 10, 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. 9

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. 10

If a person reasonably believes that force is necessary to protect himself or another person from what he reasonably believes to be unlawful physical harm about to be inflicted by another and uses such force, then he acted in self-defense or defense of another.

However, self-defense which involves using force likely to cause death or great bodily harm is justified only if the person reasonably believes that such force is necessary to protect himself or a third person from what he reasonably believes to be a substantial risk of death or great bodily harm.

INSTRUCTION NO. 11

The Superseding Indictment in this case alleges that the Defendant is an Indian and that the alleged offense occurred in Indian country. The existence of those two factors is necessary in order for this Court to have jurisdiction over the crime charged in the Superseding Indictment. Counsel for the United States, counsel for the Defendant, and the Defendant have agreed or stipulated that the Defendant is an Indian and that the place where the alleged incident is claimed to have occurred is in Indian country.

The Defendant has not, by entering this agreement or stipulation, admitted his guilt of the offense charged, and you may not draw any inference of guilt from the stipulation. The only effect of this stipulation is to establish the facts that the Defendant is an Indian and that the place where the alleged offense is claimed to have occurred is in Indian country.

INSTRUCTION NO. 12

If you unanimously find the Defendant "not guilty" of second-degree murder under Instruction No. 8, or if, after all reasonable efforts, you are unable to reach a verdict on Instruction No. 8, you should record that decision on the verdict form and go on to consider whether that Defendant is guilty or not guilty of the crime of voluntary manslaughter under this instruction. The crime of voluntary manslaughter, a lesser-included offense of the crime charged in Count I of the Superseding Indictment, has four elements:

***One*, on or about October 22, 2024, in Todd County, South Dakota, the Defendant voluntarily, intentionally, and unlawfully killed Andrew Two Eagle;**

***Two*, the Defendant acted in the heat of passion caused by adequate provocation or sudden quarrel caused by adequate provocation;**

Heat of passion is defined in Instruction No. 13.

***Three*, the killing occurred in Indian country; and**

***Four*, the Defendant is an Indian.**

For you to find the Defendant guilty of voluntary manslaughter, a lesser-included offense, under Count I, the Government must prove all of these elements beyond a reasonable doubt and the Government must further prove beyond a reasonable doubt that the Defendant was not acting in self-defense or defense of others as defined in Instruction No. 10; otherwise you must find the Defendant not guilty of voluntary manslaughter, a lesser-included offense, under Count I.

INSTRUCTION NO. 13

The Defendant acted upon heat of passion or sudden quarrel caused by adequate provocation, if:

One, the Defendant was provoked in a way that would cause a reasonable person to lose his self-control;

Two, a reasonable person subject to the same provocation would not have regained self-control in the time between the provocation and the killing; and

Three, the Defendant did not regain his self-control in the time between the provocation and the killing.

Heat of passion or sudden quarrel may result from anger, rage, resentment, terror, or fear. The question is whether the Defendant, while in such an emotional state, lost self-control and acted on impulse and without reflection.

Provocation, in order to be adequate under the law, must be such as would naturally induce a reasonable person in the passion of the moment to temporarily lose self-control and kill on impulse and without reflection. A blow or other personal violence may constitute adequate provocation, but trivial or slight provocation, entirely disproportionate to the violence of the retaliation, is not adequate provocation.

It must be such provocation as would arouse a reasonable person.

INSTRUCTION NO. 14

The crime of assault with a dangerous weapon, as charged in count II of the Superseding Indictment, has five elements:

***One*, on or about October 22, 2024, in Todd County, South Dakota, the Defendant assaulted Andrew Two Eagle with the specific intent to cause bodily harm;**

***Two*, the Defendant used a dangerous weapon, specifically a sharp-edged instrument, in the assault;**

***Three*, the offense took place in Indian country;**

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

***Five*, the Defendant did not act in self-defense or defense of a third person.**

"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.

If all of these elements have been proved beyond a reasonable doubt as to the Defendant and if it has further been proved beyond a reasonable doubt that the Defendant was not acting in self-defense or defense of a third person as defined in Instruction No. 10, 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. 15

The crime of assault resulting in serious bodily injury, as charged in count III of the Superseding Indictment, has five elements:

***One*, on or about October 22, 2024, in Todd County South Dakota, the Defendant assaulted Andrew Two Eagle;**

***Two*, as a result of that assault Andrew Two Eagle suffered serious bodily injury;**

***Three*, the assault happened in Indian country;**

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

***Five*, the Defendant did not act in self-defense or defense of another person.**

"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 and if it has further been proved beyond a reasonable doubt that the Defendant was not acting in self-defense or defense of a third person as defined in Instruction No. 10, 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. 16

The crime of Robbery, as charged in Count IV of the Superseding Indictment, has four elements:

***One*, on or about October 22, 2024, in Todd County, South Dakota, the Defendant took two imitation pistols from the person or presence of Andrew Two Eagle;**

***Two*, such taking was by force and violence, or by intimidation;**

***Three*, the Defendant is an Indian; and**

***Four*, the offense was committed in Indian Country.**

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

If all of these elements have been proved beyond a reasonable doubt as to the Defendant and if it has further been proved beyond a reasonable doubt that the Defendant was not acting in self-defense or defense of a third person as defined in Instruction No. 10, then you must find the Defendant guilty of the crime charged under Count IV; otherwise you must find the Defendant not guilty of this crime under Count IV.

INSTRUCTION NO. 17

A person may also be found guilty of Robbery even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of Robbery. In order to have aided and abetted the commission of a crime a person must, before or at the time the crime was committed:

***One*, have known Robbery was being committed or going to be committed;**

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

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

***Four*, have acted with the knowledge or intent required for the commission of the offense.**

For you to find the Defendant guilty of Robbery by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of Robbery were committed by some person or persons and that the Defendant aided and abetted the commission of that crime.

You may infer the Defendant had the requisite advance knowledge of the Robbery if you find the Defendant failed to object or withdraw from actively participating in the commission of Robbery after the Defendant observed another participant complete Robbery.

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. 18

The crime of Commission of a Crime of Violence While Failing to Register as a Sex Offender, as charged in Count V of the Superseding Indictment, has four elements:

***One*, the Defendant was required to register as a sex offender or update a registration under federal law;**

***Two*, the Defendant has a federal sex offense conviction occurring in a federal court;**

***Three*, the Defendant knowingly failed to register or keep his registration current as a sex offender for the location where he was residing, as required by the Sex Offender Registration and Notification Act; and**

***Four*, on or about October 22, 2024, in Todd County, South Dakota, the Defendant committed the crimes of Second Degree Murder, OR Voluntary Manslaughter, OR Robbery, OR Assault With a Dangerous Weapon, which are crimes of violence under federal law.**

An individual must register under the Sex Offender Registration and Notification Act if he is classified as a "sex offender" under federal law. A "sex offender" is an individual convicted of a "sex offense" in a state or federal court. You are instructed that a conviction for Abusive Sexual Contact is a federal sex offense requiring registration.

The prosecution must prove beyond a reasonable doubt that the Defendant "knowingly" failed to register or keep his registration current. 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 Government does not have to prove that the Defendant knew that he was violating federal law by failing to register or to update his registration. It is sufficient for the prosecution to prove that the Defendant knew of his obligation to register as a sex offender anywhere that he resided, or whenever he changed his residence, as a result of a prior conviction for a sex offense and knowingly failed to do so.

Keeping a registration current includes updating a change in residence, workplace, or school.

You are instructed that Second Degree Murder, Voluntary Manslaughter, Robbery, and Assault With a Dangerous Weapon are crimes of violence under federal law. 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 V; otherwise you must find the Defendant not guilty of this crime under Count V.

INSTRUCTION NO. 19

The crime of Failure to Register as a Sex Offender, as charged in Count VI of the Superseding Indictment, has three elements:

***One*, the Defendant was required to register as a sex offender or update a registration under federal law;**

***Two*, the Defendant has a federal sex offense conviction occurring in a federal court; and**

***Three*, between on or about June 26, 2024, and October 23, 2024, in South Dakota, the Defendant knowingly failed to register or keep his registration current as a sex offender for the location where he was residing, as required by the Sex Offender Registration and Notification Act.**

An individual must register under the Sex Offender Registration and Notification Act if he is classified as a "sex offender" under federal law. A "sex offender" is an individual convicted of a "sex offense" in a state or federal court. You are instructed that a conviction for Abusive Sexual Contact is a federal sex offense requiring registration.

The prosecution must prove beyond a reasonable doubt that the Defendant "knowingly" failed to register or keep his registration current. 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 prosecution does not have to prove that the Defendant knew that he was violating federal law by failing to register or to update his registration. It is sufficient for the prosecution to prove that the Defendant knew of his obligation to register as a sex offender anywhere that he resided, or whenever he changed his residence, as a result of a prior conviction for a sex offense and knowingly failed to do so.

Keeping a registration current includes updating a change in residence, workplace, or school.

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 VI; otherwise you must find the Defendant not guilty of this crime under Count VI.

INSTRUCTION NO. 20

You have heard evidence that the Defendant was previously convicted of the crime of Failure to Register as a Sex Offender. You may consider this evidence only if you unanimously find it is more likely true than not true that the Defendant committed the act. This is a lower standard than proof beyond a reasonable doubt. You decide that by considering all of the evidence relating to the alleged act, then deciding what evidence is more believable.

If you find that this evidence has not been proved, you must disregard it. If you find this evidence has been proved, then you may consider it only for the limited purpose of deciding whether the Defendant knew he was required to register as a sex offender and update his sex offender registration. You should give it the weight and value you believe it is entitled to receive.

Remember, even if you find that the Defendant may have committed similar acts in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. The Defendant is on trial only for the crime charged, and you may consider the evidence of prior acts only on the issues stated above.

INSTRUCTION NO. 21

You have heard evidence that the Defendant was previously convicted of certain crimes, namely Abusive Sexual Contact (felony) and Failure to Register as a Sex Offender (felony). Except as specifically provided in Instruction No. 20, you may use evidence that the Defendant was previously convicted of these felony offenses only to help you decide whether to believe his testimony and how much weight to give it. The fact that he was previously convicted of a crime does not mean that he committed the crimes charged here, and you must not use that evidence as any proof of the crimes charged in this case.

INSTRUCTION NO. 22

You have heard testimony that the Defendant made a statement to law enforcement. It is for you to decide:

First, whether the Defendant made the statement; and

Second, if so, how much weight you should give to it.

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statement may have been made.

INSTRUCTION NO. 23

You have heard that Jesse White Thunder was once convicted of crimes. You may use that evidence only to help you decide whether to believe the witness and how much weight to give his testimony.

INSTRUCTION NO. 24

You have heard testimony from Jesse White Thunder and Michael Leader Charge regarding their participation in the crimes charged against the Defendant. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by their desire to please the Government or to strike a good bargain with the Government about their own situation is for you to determine.

INSTRUCTION NO. 25

You have heard that Jesse White Thunder and Michael Leader Charge pled guilty to crimes which arose out of the same events for which the Defendant is on trial here. You must not consider those guilty pleas as any evidence of this Defendant's guilt. You may consider those witnesses' guilty pleas only for the purpose of determining how much, if at all, to rely upon their testimony.

INSTRUCTION NO. 26

You have heard evidence that Jesse White Thunder and Michael Leader Charge hope to receive reduced sentences on criminal charges pending against them in return for their cooperation with the prosecution in this case. These witnesses entered into agreements with the United States Attorney's Office which provide that in return for their assistance, the Government will dismiss certain charges and recommend a less severe sentence. If the prosecutor handling these witnesses' cases believes they provided substantial assistance, that prosecutor can file in the court in which the charges are pending against these witnesses a motion to reduce their sentence. The judge has no power to reduce a sentence for substantial assistance unless the prosecution, 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 prosecution, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

You may give the testimony of these witnesses such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by his hope of receiving a reduced sentence is for you to decide.

INSTRUCTION NO. 27

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' 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. 28

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. 29

The Superseding Indictment charges that the offenses were committed "on or about" a certain date. Although it is necessary for the United States to prove beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged in the Superseding Indictment, it is not necessary for the United States to prove that the offenses were committed precisely on the date charged.

INSTRUCTION NO. 30

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. 31

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 Superseding 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. FRANK WHITE THUNDER, Defendant.	3:24-CR-30056-ECS VERDICT FORM

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

1. We find the Defendant, Frank White Thunder, _____ (fill in either "not guilty" or "guilty") of murder in the second degree as charged in Count I of the Superseding 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 murder in the second degree, otherwise leave this blank.

We find the Defendant, Frank White Thunder, _____ (fill in either "not guilty" or "guilty") of the lesser included offense of voluntary manslaughter.

2. We find the Defendant, Frank White Thunder, _____ (fill in either "not guilty" or "guilty") of assault with a dangerous weapon as charged in Count II of the Superseding Indictment.

3. We find the Defendant, Frank White Thunder, _____ (fill in either "not guilty" or "guilty") of assault resulting in serious bodily injury as charged in Count III of the Superseding Indictment.

4. We find the Defendant, Frank White Thunder, _____ (fill in either "not guilty" or "guilty") of robbery as charged in Count IV of the Superseding Indictment.

5. We find the Defendant, Frank White Thunder, _____ (fill in either "not guilty" or "guilty") of commission of a crime of violence while failing to register as a sex offender as charged in Count V of the Superseding Indictment.

6. We find the Defendant, Frank White Thunder, _____ (fill in either "not guilty" or "guilty") of failure to register as a sex offender as charged in Count VI of the Superseding Indictment.

Dated January ____, 2026.

_____
Foreperson