

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 – COUNT 1: BANK ROBBERY

For you to find Ferris Valentine guilty of the offense of bank robbery as charged in Count 1 of the Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, on or about November 15, 2016, at Sioux Falls, in Minnehaha County, in the District of South Dakota, Ferris Valentine took or attempted to take money from the person or presence of another while that money was in the care, custody, or control of the First National Bank;

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

Three, Ferris Valentine assaulted or put in jeopardy the life of another person by use of a dangerous weapon, while taking or attempting to take the money;

“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. The law requires only that the defendant used a dangerous weapon, not that the weapon be loaded, actually capable of firing, or real. A weapon may be dangerous if it instills fear in the average citizen by creating an immediate danger that a violent response will follow.

And four, the deposits of First National Bank were then insured by the Federal Deposit Insurance Corporation.

For you to find Valentine guilty of bank robbery charged in Count 1 of the Superseding Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find Valentine not guilty of bank robbery charged in Count 1 of the Superseding Indictment.

FINAL INSTRUCTION NO. 3 – COUNT 1: AIDING AND ABETTING

Valentine may also be found guilty of bank robbery as charged in Count 1 of the Superseding Indictment even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of bank 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 bank robbery was being committed or going to be committed;

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

Three, have knowingly acted in some way for the purpose of causing or aiding the commission of bank robbery.

For you to find Valentine guilty of bank robbery by reason of aiding and abetting charged in Count 1 of the Superseding Indictment, the prosecution must prove beyond a reasonable doubt that all of the elements of bank robbery were committed by some person or persons and that Valentine aided and abetted the commission of that crime.

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

FINAL INSTRUCTION NO. 4 – COUNT 2: BANK ROBBERY

For you to find Ferris Valentine guilty of the offense of bank robbery as charged in Count 2 of the Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, on or about November 24, 2017, at Sioux Falls, in Minnehaha County, in the District of South Dakota, Ferris Valentine took or attempted to take money from the person or presence of another while that money was in the care, custody, or control of the First National Bank;

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

Three, Ferris Valentine assaulted or put in jeopardy the life of another person by use of a dangerous weapon, while taking or attempting to take the money;

See Final Jury Instruction No. 2 for the definitions of “assault” and “dangerous weapon.”

And four, the deposits of First National Bank were then insured by the Federal Deposit Insurance Corporation.

For you to find Valentine guilty of the offense charged in Count 2 of the Superseding Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find Valentine not guilty of the offense charged in Count 2 of the Superseding Indictment.

FINAL INSTRUCTION NO. 5 – 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 Terrell Brunston was once 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.

You have heard testimony from Terrell Brunston who stated that he participated in the crime charged against the defendant. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by his desire to please the prosecution or to strike a good bargain with the prosecution about his own situation is for you to determine.

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

You have heard evidence that Terrell Brunston received a reduced sentence on criminal charges pending against him, in return for his cooperation with the government in this case. Brunston entered into an agreement with the government which provided that in return for his assistance, the government recommended a less severe sentence for the crime with which he was charged. If a prosecutor handling this witness's case believed he provided substantial assistance, the prosecutor filed a motion to reduce his sentence. If such a motion for reduction of sentence for substantial assistance is filed by the prosecutor, then it was up to the Judge to decide whether to reduce the sentence at all, and if so, how much to reduce it. You may give this witness such weight as you think he 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.

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.

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 charge, 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 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. 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.
- 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.

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

FINAL INSTRUCTION NO. 8 – 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. 9 – DUTY DURING DELIBERATIONS

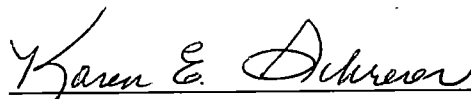
You must follow certain rules while conducting your deliberations and returning your verdict:

- 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 February 18, 2021.

BY THE COURT:

Handwritten signature of Karen E. Schreier in cursive script.

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE