UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. VINE PHILLIP HAYES, Defendant.	5:22-CR-50164-KES **FINAL INSTRUCTIONS TO THE JURY**

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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 – FIRST DEGREE MURDER

For you to find Vine Phillip Hayes guilty of the offense of First Degree Murder, as charged in the Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

***One*, the defendant, Hayes, unlawfully killed Robert Lynn Jumping 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 Robert Lynn Jumping 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.

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. You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

***Three*, the killing was premeditated;**

A killing is premeditated when it is intentional and the result of planning or deliberation. The amount of time needed for premeditation of a killing depends on the person and the circumstances. It must be long enough for the defendant, after forming the intent to kill, to be fully conscious of his intent, and to have thought about the killing.

For there to be premeditation, the defendant must think about the taking of a human life before acting. The amount of time required

for premeditation cannot be arbitrarily fixed. The time required varies as the minds and temperaments of people differ and according to the surrounding circumstances in which they may be placed. Any interval of time between forming the intent to kill, and acting on that intent, which is long enough for the defendant to be fully conscious and mindful of what he intended and willfully set about to do, is sufficient to justify the finding of premeditation.

***Four*, the killing took place in Pine Ridge, in Indian Country, in the District of South Dakota;**

"Indian Country" means:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

***And five*, the defendant is an Indian.**

In determining whether Hayes is an Indian person, the government must prove that Hayes:

One, has some degree of Indian blood; and

Two, is an enrolled member of an Indian Tribe or band.

Hayes may be guilty of First Degree Murder even if he personally did not do every act constituting that offense, if he aided and abetted that offense.

In order to have aided and abetted the commission of a crime, Hayes must, before or at the time the crime was committed:

***One*, have known the crime of First Degree Murder was being committed or going to be committed;**

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

***Three*, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of First Degree Murder;**

***And four*, have acted with malice aforethought and premeditation.**

For you to find Hayes guilty of First Degree Murder or First Degree Murder by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all the essential elements of First Degree Murder were committed by Hayes or some person or persons and that Hayes aided and abetted the commission of that crime. Otherwise, you must find the defendant not guilty of this crime.

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

You should understand that 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 is about to be committed, but who happens to act in a way that advances some offense, does not thereby become an aider and abettor.

If your verdict under this instruction is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict, you should record that decision on the verdict form and go on to consider whether Hayes is guilty of the crime of Second Degree Murder—Aiding and Abetting—under this instruction. The crime of Second Degree Murder—Aiding and Abetting, a lesser-

included offense of the crime of First Degree Murder, has four elements which are:

***One*, Hayes unlawfully killed Robert Jumping Eagle;**

***Two*, the defendant did so with malice aforethought, as defined above;**

***Three*, the killing took place in Pine Ridge, in Indian Country, in the District of South Dakota;**

***And four*, the defendant is an Indian.**

Hayes may be guilty of Second Degree Murder even if he personally did not do every act constituting that offense, if he aided and abetted that offense.

In order to have aided and abetted the commission of a crime, Hayes must, before or at the time the crime was committed:

***One*, have known the crime of Second Degree Murder was being committed or going to be committed;**

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

***Three*, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of Second Degree Murder;**

***And four*, have acted with malice aforethought.**

For you to find Hayes guilty of Second Degree Murder or Second Degree Murder by reason of aiding and abetting, a lesser included offense of First Degree Murder, the government must prove beyond a reasonable doubt that all the essential elements of Second Degree Murder were committed by Hayes or some person or persons and that Hayes aided and abetted the commission of that crime. Otherwise, you must find the defendant not guilty of this crime.

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

You should understand that 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 is about to be committed, but who happens to act in a way that advances some offense, does not thereby become an aider and abettor.

If your verdict on the offenses of First Degree Murder and Second Degree Murder are not guilty, or if, after all reasonable efforts, you are unable to reach a verdict, you should record that decision on the verdict form and go on to consider whether Hayes is guilty of the crime of Voluntary Manslaughter—Aiding and Abetting—under this instruction. The crime of Voluntary Manslaughter—Aiding and Abetting, a lesser-included offense of the crimes of First Degree Murder and Second Degree Murder, has four elements which are:

***One*, Hayes voluntarily, intentionally, and unlawfully killed Robert Jumping Eagle;**

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

Hayes 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. If the provocation aroused the defendant because he was voluntarily intoxicated, and would not have aroused a sober person, it does not reduce the offense to manslaughter.

***Three*, the killing took place in Pine Ridge, in Indian Country, in the District of South Dakota;**

***And four*, the defendant is an Indian.**

Hayes may be guilty of Voluntary Manslaughter even if he personally did not do every act constituting that offense, if he aided and abetted that offense.

In order to have aided and abetted the commission of a crime, Hayes must, before or at the time the crime was committed:

***One*, have known the crime of Voluntary Manslaughter was being committed or going to be committed;**

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

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

***And four,* have acted voluntarily and intentionally.**

For you to find Hayes guilty of Voluntary Manslaughter or Voluntary Manslaughter by reason of aiding and abetting, a lesser included offense of First Degree Murder and Second Degree Murder, the government must prove beyond a reasonable doubt that all the essential elements of Voluntary Manslaughter were committed by Hayes or some person or persons and that Hayes aided and abetted the commission of that crime. Otherwise, you must find the defendant not guilty of this crime.

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

You should understand that 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 is about to be committed, but who happens to act in a way that advances some offense, does not thereby become an aider and abettor.

FINAL INSTRUCTION NO. 3 – DEFENDANT'S EXCULPATORY STATEMENTS

When a defendant voluntarily and intentionally offers an explanation or makes some statement before trial tending to show his innocence, and this explanation or statement is later shown to be false, you may consider whether this evidence points to a consciousness of guilt. The significance to be attached to any such evidence is a matter for you to determine.

FINAL INSTRUCTION NO. 4 – DEFENDANT'S OTHER ACTS

You have heard evidence that Vine Phillip Hayes engaged in other acts. 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 defendant had the state of mind or intent necessary to commit the crime charged in the Superseding Indictment; or had a motive or opportunity to commit the acts described in the Superseding Indictment. 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.

FINAL INSTRUCTION NO. 5 – INFLUENCING WITNESSES

Attempts by a defendant to conceal, destroy, make up evidence, or influence witnesses in connection with the crime charged in this case may be considered by you in light of all the other evidence in the case. You may consider whether this evidence shows a consciousness of guilt and determine the significance to be attached to any such conduct.

FINAL INSTRUCTION NO. 6 – 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 evidence that one or more witnesses has been 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 the witness's testimony.

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

You have heard that one or more witnesses 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 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 one or more witnesses 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 Hayes' 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 one or more witnesses received, or hopes to receive, a reduced sentence on criminal charges pending against that witness, in return for the witness's cooperation with the government in this case. If the prosecutor handling the witness's case believed or believes the witness provided substantial assistance, the prosecutor can file a motion to reduce the witness's sentence. If such a motion for reduction of sentence for substantial assistance is filed by the prosecutor, then it is or 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's testimony such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by the witness's 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.

Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

FINAL INSTRUCTION NO. 7 – 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 the offense charged against him.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

This burden means that you must find the defendant not guilty of the 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. 8 – REASONABLE DOUBT

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

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

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

FINAL INSTRUCTION NO. 9 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- Your verdict, either guilty or not guilty, must be unanimous.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all of the evidence bearing on each element before you.
- Take all the time that you feel is necessary.

Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 10 – DUTY DURING DELIBERATIONS

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

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is guilty or not guilty. If the defendant is guilty, I will decide what the sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated October 6, 2023.

BY THE COURT:

Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE