

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. KISON ROBERTSON, Defendant.	5:17-CR-50059-01-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 - ATTEMPTED MURDER

For you to find Kison Robertson guilty of attempted murder, as charged in Count 1 of the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, that on or about March 30, 2017, Kison Robertson did something that was a substantial step toward killing Urva Quick Bear, Sr.;

A substantial step, must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer, viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute.

Two, that when Kison Robertson took that step, he intended to kill Urva Quick Bear, Sr.;

Three, that Kison Robertson was not acting in self-defense;

“Acting in self-defense” means a person reasonably believes that force is necessary to protect himself from what he reasonably believes to be unlawful physical harm about to be inflicted by another, and he uses such force.

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 from what he reasonably believes to be a substantial risk of death or great bodily harm.

An aggressor need not have been armed in order for a defendant to claim self-defense, although whether an aggressor was armed may be relevant in determining the degree of force a defendant was entitled to use.

A defendant asserting self-defense is not required to retreat before resorting to force, but the availability of retreat may be a factor for you to consider in evaluating whether unreasonable force was used.

Four, that Urva Quick Bear, Sr. is an Indian;

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that Urva Quick Bear, Sr. is an Indian.

The defendant has not, by entering into 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 present to the jury the fact that Urva Quick Bear, Sr. is an Indian.

And five, that the offense took place in Indian Country, namely in Oglala Lakota County in the District of South Dakota.

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that Oglala Lakota County is located in Indian Country.

The defendant has not, by entering into 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 present to the jury the fact that Oglala Lakota County is located in Indian Country.

For you to find the defendant guilty, the prosecution must prove all of the essential elements beyond a reasonable doubt. The government must further prove beyond a reasonable doubt that Robertson was not acting in self-defense. Otherwise, you must find the defendant not guilty of the offense charged in Count 1 of the Superseding Indictment.

FINAL INSTRUCTION NO. 3 – ASSAULT WITH A DANGEROUS WEAPON

For you to find Kison Robertson guilty of assault with a dangerous weapon, as charged in Count 2 of the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, that on or about March 30, 2017, Kison Robertson assaulted Urva Quick Bear, Sr.;

An “assault” is any intentional and voluntary attempt or threat to do injury to the person of another, when coupled with the apparent present ability to do so sufficient to put the person against whom the attempt is made in fear of immediate bodily harm.

Two, that Kison Robertson used a dangerous weapon, namely a firearm, to commit the assault;

A “dangerous weapon” is an object used in a manner likely to endanger life or inflict serious bodily harm.

Three, that Kison Robertson intended to do bodily harm;

Four, that Kison Robertson was not acting in self-defense;

“Acting in self-defense” was defined for you in Final Instruction Number 2.

Five, that Urva Quick Bear, Sr. is an Indian;

The parties stipulated that that Urva Quick Bear, Sr. is an Indian. The effect of this stipulation was explained in Final Instruction Number 2.

And six, that the offense took place in Indian Country, namely in Oglala Lakota County in the District of South Dakota.

The parties stipulated that Oglala Lakota County is located in Indian Country. The effect of this stipulation was explained in Final Instruction Number 2.

For you to find the defendant guilty, the prosecution must prove all of the essential elements beyond a reasonable doubt. The government must further prove beyond a reasonable doubt that Robertson was not acting in self-

defense. Otherwise, you must find the defendant not guilty of the offense charged in Count 2 of the Superseding Indictment.

FINAL INSTRUCTION NO. 4 – ASSAULT WITH A DANGEROUS WEAPON

For you to find Kison Robertson guilty of assault with a dangerous weapon, as charged in Count 3 of the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, that on or about March 30, 2017, Kison Robertson assaulted Urva Quick Bear, Jr.;

An “assault” is any intentional and voluntary attempt or threat to do injury to the person of another, when coupled with the apparent present ability to do so sufficient to put the person against whom the attempt is made in fear of immediate bodily harm.

Two, that Kison Robertson used a dangerous weapon, namely a firearm, to commit the assault;

A “dangerous weapon” is an object used in a manner likely to endanger life or inflict serious bodily harm.

Three, that Kison Robertson intended to do bodily harm;

Four, that Kison Robertson was not acting in self-defense;

“Acting in self-defense” was defined for you in Final Instruction Number 2.

Five, that Urva Quick Bear, Jr. is an Indian;

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that Urva Quick Bear, Jr. is an Indian.

The defendant has not, by entering into 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 present to the jury the fact that Urva Quick Bear, Jr. is an Indian.

And six, that the offense took place in Indian Country, namely in Oglala Lakota County in the District of South Dakota.

The parties stipulated that Oglala Lakota County is located in Indian Country. The effect of this stipulation was explained in Final Instruction Number 2.

For you to find the defendant guilty, the prosecution must prove all of the essential elements beyond a reasonable doubt. The government must further prove beyond a reasonable doubt that Robertson was not acting in self-defense. Otherwise, you must find the defendant not guilty of the offense charged in Count 3 of the Superseding Indictment.

FINAL INSTRUCTION NO. 5 – ASSAULT RESULTING IN SERIOUS BODILY INJURY

For you to find Kison Robertson guilty of assault with a dangerous weapon, as charged in Count 4 of the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, that on or about March 30, 2017, Kison Robertson assaulted Urva Quick Bear, Sr.;

An “assault” is any intentional and voluntary attempt or threat to do injury to the person of another, when coupled with the apparent present ability to do so sufficient to put the person against whom the attempt is made in fear of immediate bodily harm.

Two, that the assault resulted in serious bodily injury to Urva Quick Bear, Sr.;

“Serious bodily injury” means injury that involves:

- (1) a substantial risk of death;
- (2) extreme physical pain;
- (3) protracted and obvious disfigurement; or
- (4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Three, that Kison Robertson was not acting in self-defense;

“Acting in self-defense” was defined for you in Final Instruction Number 2.

Four, that Urva Quick Bear, Sr. is an Indian;

The parties stipulated that that Urva Quick Bear, Sr. is an Indian. The effect of this stipulation was explained in Final Instruction Number 2.

And five, that the offense took place in Indian Country, namely in Oglala Lakota County in the District of South Dakota.

The parties stipulated that Oglala Lakota County is located in Indian Country. The effect of this stipulation was explained in Final Instruction Number 2.

For you to find the defendant guilty, the prosecution must prove all of the essential elements beyond a reasonable doubt. The government must

further prove beyond a reasonable doubt that Robertson was not acting in self-defense. Otherwise, you must find the defendant not guilty of the offense charged in Count 4 of the Superseding Indictment.

FINAL INSTRUCTION NO. 6 – DISCHARGE OF A FIREARM DURING THE COMMISSION OF A CRIME OF VIOLENCE

For you to find Kison Robertson guilty of discharge of a firearm during the commission of a crime of violence, as charged in Count 5 of the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, that on or about March 30, 2017, Kison Robertson, committed a crime of violence, namely, either the crime of Attempted Murder, as charged in Count One of the Superseding Indictment, Assault with a Dangerous Weapon, as charged in Count Two of the Superseding Indictment, or Assault Resulting in Serious Bodily Injury, as charged in Count Four of the Superseding Indictment; and

Two, that Kison Robertson knowingly discharged a firearm, in furtherance of that crime.

The phrase “in furtherance of” should be given its plain meaning, that is, the act of furthering, advancing, or helping forward. The phrase “in furtherance of” is a requirement that Robertson discharged the firearm with the intent that it advance, assist or help commit the crime, not that it actually did so.

For you to find the defendant guilty, the prosecution must prove all of the essential elements beyond a reasonable doubt; otherwise, you must find the defendant not guilty of the offense charged in Count 5 of the Superseding Indictment.

FINAL INSTRUCTION NO. 7 – DISCHARGE OF A FIREARM DURING THE COMMISSION OF A CRIME OF VIOLENCE

For you to find Kison Robertson guilty of discharge of a firearm during the commission of a crime of violence, as charged in Count 6 of the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, that on or about March 30, 2017, Kison Robertson, committed a crime of violence, namely, Assault with a Dangerous Weapon, as charged in Count Three of the Superseding Indictment; and

Two, that Kison Robertson knowingly discharged a firearm, in furtherance of that crime.

The phrase “in furtherance of” should be given its plain meaning, that is, the act of furthering, advancing, or helping forward. The phrase “in furtherance of” is a requirement that Robertson discharged the firearm with the intent that it advance, assist or help commit the crime, not that it actually did so.

For you to find the defendant guilty, the prosecution must prove all of the essential elements beyond a reasonable doubt; otherwise, you must find the defendant not guilty of the offense charged in Count 6 of the Superseding Indictment.

FINAL INSTRUCTION NO. 8 – 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 Kison Robertson was previously convicted of crimes. You may use that evidence 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 crimes 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.

You have heard evidence that witness Urva Quick Bear, Sr. has been convicted of a crime. You may use that evidence only to help you decide whether or not to believe him and how much weight to give his testimony.

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. 9 – 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 charges, 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 you must find the defendant not guilty of the offenses charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of the offenses.

FINAL INSTRUCTION NO. 10 – 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 not hesitate 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. 11 - 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. 12 – DUTY DURING DELIBERATIONS

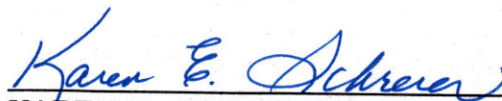
You must follow certain rules while conducting your deliberations and returning your verdict:

- 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 March 21, 2018.

BY THE COURT:

A handwritten signature in blue ink that reads "Karen E. Schreier". The signature is written in a cursive style and is positioned above a horizontal line.

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE