

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>ANTOINE JOEY MAKES GOOD and VINNIE MAKES GOOD,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">CR. 20-50144-JLV</p> <p style="text-align: center;">PRIMARY JURY INSTRUCTIONS</p>
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INSTRUCTION NO. 1 - ROLE OF INSTRUCTIONS

Members of the jury, I will take a few minutes to give you the instructions about this case and about your duties as jurors. At the end of the trial, I will give you further instructions. I may also give you instructions during the trial. These instructions explain the law that applies to this case. Unless I specifically tell you otherwise, all instructions, both those I give you now and those I will give you later, are equally binding on you and must be followed. Consider these instructions with all written and oral instructions given to you during and at the end of the trial and apply them to the facts of the case. You must consider my instructions as a whole and not single out some instructions and ignore others.

INSTRUCTION NO. 2 - DUTY OF JURORS

This is a criminal case brought by the United States government against the defendants Antoine Joey Makes Good and Vinnie Makes Good. Both defendants are charged with one count of second degree murder. Your duty is to decide from the evidence whether Antoine Makes Good and Vinnie Makes Good are not guilty or guilty of the offense charged against them. Keep in mind you must give separate consideration to the evidence about each individual defendant.

You will find the facts from the evidence presented in court. "Evidence" is defined in Instruction No. 8. You are entitled to consider that evidence in light of your own observations and experiences. You may use reason and common sense to draw conclusions from facts established by the evidence. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with the law or not. You will then apply the law to the facts to reach your verdict.

It is vital to the administration of justice that each of you faithfully perform your duties as jurors. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict based solely on the evidence, your common sense and the law as I give it to you. Do not take anything I may say or do during the trial as an indication of what I think about the evidence or what I think your verdict should be. Do not conclude from any ruling or

comment I may make that I have any opinion on how you should decide the case.

Please remember only Antoine Makes Good and Vinnie Makes Good, not anyone else, are on trial here. Also, remember Antoine Makes Good and Vinnie Makes Good are on trial only for the offense charged against them, not for anything else.

INSTRUCTION NO. 3 - DESCRIPTION OF THE OFFENSE

An offense consists of "elements" which the government must prove beyond a reasonable doubt in order to convict a defendant of that offense. To help you follow the evidence, I will give you the elements of the offense charged in the indictment. However, I must first explain some preliminary matters.

The charge against Antoine Makes Good and Vinnie Makes Good is set out in an indictment. An indictment is simply an accusation. It is not evidence of anything. Antoine Makes Good and Vinnie Makes Good pled not guilty to the charge brought against them. Antoine Makes Good and Vinnie Makes Good are presumed to be innocent unless and until the government proves, beyond a reasonable doubt, each element of the offense charged against them.

The indictment charges the offense was committed "on or about" a certain date. The government does not have to prove with certainty the exact date of the charged offense. It is sufficient if the evidence establishes that an offense occurred within a reasonable time of the date alleged in the indictment. I will now give you the elements for the offense charged in the indictment.

Keep in mind you must give separate consideration to the evidence regarding each individual defendant.

INSTRUCTION NO. 4 - SECOND DEGREE MURDER

The indictment charges that on or about November 1, 2020, at Kyle, in Indian country, in the District of South Dakota, the defendants, Antoine Joey Makes Good and Vinnie Makes Good, Indian persons, did unlawfully, and with malice aforethought, kill Henry "Hank" O'Rourke, by stabbing him, or did aid and abet another person in the commission of the offense, all in violation of federal law.

Elements

For you to find Antoine Makes Good and Vinnie Makes Good guilty of the offense of second degree murder as charged in the indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, on or about November 1, 2020, Antoine Makes Good and/or Vinnie Makes Good unlawfully killed Hank O'Rourke by stabbing him, or aided and abetted in the killing of Mr. O'Rourke;

Antoine Makes Good and/or Vinnie Makes Good may be found guilty of second degree murder by aiding and abetting even if he personally did not do every act constituting the offense of second degree murder. In order to have aided and abetted the offense of second degree murder, Antoine Makes Good and/or Vinnie Makes Good, before or at the time the offense was committed, must have:

1. Known that the killing of another individual was being committed or going to be committed;
2. Knowingly acted in some way for the purpose of causing, encouraging or

aiding the commission of the killing;
and

3. Acted with malice aforethought as that term is defined in element 2.

Merely being present at the scene of an event 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 which advances the offense does not thereby become an aider and abettor.

Conversely, one does not have to be present at the scene of an event in order to become an aider and abettor.

For you to find Antoine Makes Good and/or Vinnie Makes Good guilty of second degree murder by aiding and abetting, the government must prove beyond a reasonable doubt that all of the essential elements of second degree murder were committed by some person or persons and that Antoine Makes Good and/or Vinnie Makes Good aided and abetted the commission of that offense. If the government fails to prove any essential element beyond a reasonable doubt, you must find Antoine Makes Good and Vinnie Makes Good not guilty of second degree murder by aiding and abetting.

Two, in killing or aiding and abetting in the killing of Mr. O'Rourke, Antoine Makes Good and/or Vinnie Makes Good acted with malice aforethought;

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

In determining whether Antoine Makes Good and/or Vinnie Makes Good unlawfully killed Mr. O'Rourke 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.

and

Three, Antoine Makes Good and Vinnie Makes Good are Indian persons and the offense took place in Indian country at Kyle, South Dakota.

Counsel for the United States, counsel for Antoine Makes Good, Antoine Makes Good, counsel for Vinnie Makes Good and Vinnie Makes Good have agreed or stipulated that Antoine Makes Good and Vinnie Makes Good are Indian persons and the place where the alleged incident occurred is Kyle, South Dakota, in Indian country.

By entering into this agreement or stipulation, neither Antoine Makes Good nor Vinnie Makes Good has 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 Antoine Makes Good and Vinnie Makes Good are Indian persons and that, if the alleged incident occurred, it occurred in Indian country.

To find a defendant guilty of the offense of second degree murder as charged in the indictment, the government must prove all the essential elements beyond a reasonable doubt as to that defendant. If the government proves all the essential elements beyond a reasonable doubt as to a defendant, you must find that defendant guilty. If the government fails to prove any essential element beyond a reasonable doubt as to a defendant, you must find that defendant not guilty.

Keep in mind you must give separate consideration to the evidence regarding each individual defendant.

INSTRUCTION NO. 5 - PROOF OF INTENT AND KNOWLEDGE

“Intent” and “knowledge” are elements of the offense charged in this case and must be proven beyond a reasonable doubt. The government is not required to prove a defendant knew that his acts or omissions were unlawful. An act is done “knowingly” if a person realizes what he is doing and does not act through ignorance, mistake or accident. You may consider the evidence of a defendant’s words, acts or omissions, along with all other evidence, in deciding whether he acted knowingly.

Intent may be proven like anything else. You may consider any statements made or acts done by a defendant and all the facts and circumstances in evidence which may aid in determining his 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.

INSTRUCTION NO. 6 -

PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

Antoine Makes Good and Vinnie Makes Good are presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrests or charges of Antoine Makes Good or Vinnie Makes Good or the fact they are here in court. The presumption of innocence remains with Antoine Makes Good and Vinnie Makes Good throughout the trial. This presumption alone is sufficient to find Antoine Makes Good and Vinnie Makes Good not guilty. The presumption of innocence may be overcome only if the government proves, beyond a reasonable doubt, each essential element of the offense charged. The burden is always on the government to prove guilt beyond a reasonable doubt. This burden never shifts to Antoine Makes Good or Vinnie Makes Good to prove his innocence, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. Antoine Makes Good and Vinnie Makes Good are not even obligated to cross examine the witnesses called to testify by the government.

If Antoine Makes Good or Vinnie Makes Good does not testify, this fact must not be considered by you in any way or even discussed in arriving at your verdict. If Antoine Makes Good or Vinnie Makes Good testifies, you should judge his testimony in the same manner you judge the testimony of any other witness.

If the government proves beyond a reasonable doubt all the essential elements of the offense charged as to a defendant, you must find that defendant guilty. If the government fails to prove beyond a reasonable doubt any essential element of the offense charged as to a defendant, you must find that defendant not guilty.

INSTRUCTION NO. 7 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence or lack of evidence produced during trial. A reasonable doubt is a doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important affairs of life. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of a defendant's guilt. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 8 - DEFINITION OF EVIDENCE

I mentioned the word "evidence." "Evidence" includes the testimony of witnesses, documents and other things received as exhibits and stipulated facts. Stipulated facts are facts formally agreed to by the parties. Certain things are not evidence. I shall list those things for you now:

- Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence. Opening statements and closing arguments by lawyers are not evidence.
- Objections and rulings on 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 sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
- Testimony I strike from the record or tell you to disregard is not evidence and must not be considered.
- Anything you see or hear about this case outside the courtroom is not evidence.

The fact an exhibit may be shown to you does not mean you must rely on it more than you rely on other evidence.

Furthermore, a particular piece of evidence is sometimes received for a limited purpose only. That is, you may use it only for one particular purpose and not for any other purpose. I will tell you when that occurs and instruct you on the purposes for which the piece of evidence can and cannot be used.

Some of you may have heard the terms "direct evidence" and "circumstantial evidence." 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.

The weight of the evidence is not determined by the number of witnesses testifying as to the existence or nonexistence of any fact. Also, the weight of the evidence should not be determined merely by the number or volume of documents or exhibits. The weight of evidence depends on its quality, not quantity. The quality and weight of the evidence are for you to decide.

INSTRUCTION NO. 9 - CREDIBILITY OF WITNESSES

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 says, only part of it, or none of it. In deciding what testimony to believe, consider:

- The witness' intelligence;
- The opportunity the witness had to see or hear the things testified about;
- The witness' memory;
- Any motives the witness may have for testifying a certain way;
- The behavior of the witness while testifying;
- Whether the witness said something different at an earlier time;
- The witness' drug or alcohol use or addiction, if any;
- 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 people sometimes see or hear things differently and sometimes forget things. You need to consider whether a contradiction results from an innocent misrecollection or sincere lapse of memory or instead from an intentional falsehood or pretended lapse of memory.

INSTRUCTION NO. 10 - IMPEACHMENT

In Instruction No. 9, I instructed you generally on the credibility of witnesses. I now instruct you further on how the credibility of a witness may be "impeached" and how you may treat certain evidence. A witness may be discredited or impeached by:

- Contradictory evidence;
- A showing that the witness testified falsely concerning a material matter; or
- Evidence that at some other time the witness said or did something or failed to say or do something, that is inconsistent with the witness' trial testimony.

You may consider a witness discredited or impeached for other reasons as well. If you believe a witness has been discredited or impeached, it is your exclusive right to give that witness' testimony whatever weight you think it deserves.

If earlier statements of a witness are admitted into evidence, they are not admitted to prove that the contents of those statements are 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.

INSTRUCTION NO. 11 - EYEWITNESS TESTIMONY

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

In evaluating eyewitness testimony, you should consider:

- Whether the witness knew or observed the individual at an earlier time;
- Whether the witness had an adequate opportunity to observe the individual at the time in question;
- The witness' eyesight and ability to observe the individual;
- Whether the witness was under stress when encountering the individual;
- Whether the individual carried a weapon when observed by the witness;
- The circumstances under which the identification was made and the length of time that elapsed between the observation and the next opportunity the witness had to observe the individual;
- The prevailing conditions when the witness observed the individual, such as visibility, distance and similar factors;
- Whether the witness' identification was the product of their own recollection;
- Any description provided by the witness after the observation and before identifying the individual; and
- Any occasions during which the witness failed to identify the individual or made an identification inconsistent with an identification at trial.

In evaluating this testimony, you should consider all of the factors mentioned in Instructions No. 9 and No. 10 concerning your assessment of the credibility of any witness.

The government has the burden of proving identity beyond a reasonable doubt. It is not essential that the witness be free from doubt as to the correctness of the identification. However, you must be satisfied beyond a reasonable doubt of the accuracy of the identification of Antoine Makes Good or Vinnie Makes Good before you may find them guilty. If you are not convinced beyond a reasonable doubt that Antoine Makes Good or Vinnie Makes Good committed the offense charged, you must find that defendant not guilty.

INSTRUCTION NO. 12 - STATEMENT BY A DEFENDANT

You may hear testimony Antoine Makes Good or Vinnie Makes Good made a statement to others. It is for you to decide:

First, whether the statement was made; and

Second, if so, how much weight you should give the statement. In making these two decisions, you should consider all of the evidence including the circumstances under which the statement may have been made.

If you find a defendant made a statement to others, you may only consider that statement, if at all, as to that defendant.

INSTRUCTION NO. 13 - BENCH CONFERENCES AND RECESSES

During the trial it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference while the jury is present in the courtroom or by calling a recess. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. We will do what we can to keep the number and length of these conferences to a minimum.

Please be patient, because while you are waiting we are working.

INSTRUCTION NO. 14 - OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. The lawyers have a duty to object to testimony or other evidence they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made an objection.

INSTRUCTION NO. 15 - EXPERT WITNESSES

You may hear testimony from individuals described as experts. An individual who, by knowledge, skill, training, education or experience, has become an expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

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. 16 - NOTE TAKING

At the end of the trial, you must make your decision based on the evidence. We have an official court reporter making a record of the trial. However, you will not have a typewritten transcript of the trial testimony of any witness for your use in reaching a verdict. You must pay close attention to the evidence as it is presented.

If you want to take notes during the trial, you may, but be sure your note taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes in the jury room. At the end of the trial, you may take your notes out of the notebook and keep them or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

INSTRUCTION NO. 17 - MEDIA AND TECHNOLOGY

You are required to decide this case based solely on the evidence and exhibits that you see and hear in the courtroom. If one or more of you were to get additional information from an outside source, that information might be inaccurate or incomplete or for some other reason not applicable to this case, and the parties would not have a chance to explain or contradict that information because they would not know about it. This is why it is so important that you base your verdict only on information you receive in this courtroom.

In order for your verdict to be fair, you must not be exposed to any other information about the case, the law or any of the issues involved in this trial during the course of your jury duty. This is very important, so I am taking the time to give you a detailed explanation about what you should do and not do during your time as jurors.

First, you must not try to get information from any source other than what you see and hear in this courtroom. That means you may not speak to anyone, including your family and friends about this case. You may not use any printed or electronic sources to get information about this case or the issues involved. This includes the internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, smartphones, or any other electronic device. You may not do any personal investigating, such as visiting any of the places involved in this case, using internet maps or Google

Earth or any other such technology, talking to any possible witnesses, or creating your own demonstrations or reenactments of the events which are the subject of this case.

Second, you must not communicate with anyone about this case or your jury service, and you must not allow anyone to communicate with you. In particular, you may not communicate about the case through emails, text messages, tweets, blogs, comments or other postings on social networking sites, including but not limited to Facebook, Instagram, Twitter or any other website or application. This applies to communicating with your fellow jurors, your family members, your employer and the people involved in the trial, although you may notify your family and employer that you have been seated as a juror in the case. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and immediately report the contact to the court.

I recognize these rules and restrictions may affect activities you may consider to be normal and harmless. I assure you that I am very much aware I am asking you to refrain from activities which may be very common and very important in your daily lives. However, the law requires these restrictions to ensure the parties have a fair trial based on the evidence each party has an opportunity to address.

Any juror who violates the restrictions I have explained to you jeopardizes the fairness of these proceedings, and a mistrial could result which would require the entire trial process to start over. As you can imagine, a mistrial is a tremendous expense and inconvenience to the parties, the court and the taxpayers. If any juror is exposed to any outside information or has any difficulty whatsoever in following these instructions, please notify the court immediately. If any juror becomes aware that one of your fellow jurors has done something that violates these instructions, you are obligated to report that violation to the court as well.

These restrictions remain in effect throughout this trial. Once the trial is over, you may resume your normal activities. At that point, you will be free to read or research anything you wish. You will be able to speak—or choose not to speak—about the trial to anyone you wish. You may write, post or tweet about the case if you choose to do so. The only limitation is that you must wait until after the verdict, when you have been discharged from your jury service.

INSTRUCTION NO. 18 - CONDUCT OF THE JURY DURING TRIAL

To ensure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended, and I discharge you as jurors. This means you must not talk to your spouse, other family members or friends about this case until I discharge you as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case or about anyone involved with it, until the trial has ended, and I accept your verdict. If someone should try to talk to you about the case, please report it to me.

Fourth, during the trial, you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case—you should not even pass the time of day with any of them. It is important you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side, even if it is simply to pass the time of day, an unwarranted and unnecessary suspicion about your fairness might be created. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

Fifth, during the trial, do not make up your mind about what the verdict should be. Keep an open mind until you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Sixth, if at any time during the trial you have a problem you would like to bring to my attention or if you feel ill or need to go to the restroom, please send a note to the court security officer, who will deliver it to me. Or just raise your hand and get my attention. I want you to be comfortable, so please do not hesitate to inform me of any problem.

INSTRUCTION NO. 19 - OUTLINE OF THE TRIAL

The trial will proceed as follows:

After these instructions, a lawyer for the government may make an opening statement. Next, the lawyers for Antoine Makes Good and Vinnie Makes Good may, but do not have to, make opening statements. An opening statement is not evidence. It is simply a summary of what the lawyer expects the evidence to be.

The government will then present its evidence and call witnesses. The lawyers for Antoine Makes Good and Vinnie Makes Good may, but have no obligation to, cross examine them. Following the government's case, Antoine Makes Good and Vinnie Makes Good may, but do not have to, present evidence or call witnesses. If Antoine Makes Good or Vinnie Makes Good calls witnesses, the government may cross examine them.

After presentation of the evidence is complete, the lawyers will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. I will then give you additional instructions, and you will retire to deliberate on your verdict.

Dated April 12, 2022.

BY THE COURT:



JEFFREY L. VIKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ANTOINE JOEY MAKES GOOD and VINNIE MAKES GOOD, Defendants.	CR. 20-50144-JLV SUPPLEMENTAL JURY INSTRUCTIONS
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INSTRUCTION NO. 20 - EQUALLY IMPORTANT INSTRUCTIONS

Members of the jury, I will now take a few minutes to give you additional instructions explaining the law which applies to this case. All instructions, both those I gave you earlier and these instructions, are equally binding on you and must be followed. You must consider my instructions as a whole and not single out some instructions and ignore others.

INSTRUCTION NO. 21 - INFLUENCING WITNESSES

You may consider, in light of all the other evidence in the case, any evidence of an attempt by Vinnie Makes Good to influence a witness in connection with the offense charged in this case. If you find an attempt was made, you may consider whether that attempt shows a consciousness of guilt and determine the significance, if any, to be attached to the conduct.

However, such evidence may not be considered in any way as to Antoine Makes Good.

INSTRUCTION 22 - DEFENDANT'S PRIOR ACTS

You have heard that Antoine Makes Good may have previously engaged in assaultive behavior similar to that which he is alleged to have engaged in in this case. This evidence is received for a limited purpose only, and you may not consider the evidence as to Vinnie Makes Good.

You may only consider the evidence of other acts if you find that it is proven by the greater weight of the evidence. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. This is a lower standard than proof beyond a reasonable doubt. If you find that the evidence of other acts is not proven by the greater weight of the evidence, then you must disregard such evidence.

You are not permitted to consider this evidence to show Antoine Makes Good took action in conformity with the previous conduct. You may, however, consider this evidence to help you decide proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

You may give such evidence no weight or such weight as you think it is entitled to receive.

Remember, Antoine Makes Good is on trial only for the offense charged in this case. You may not convict a person simply because you believe he may have committed some acts, even bad acts, in the past.

INSTRUCTION NO. 23 - ALIBI

One of the issues in this case is whether Antoine Makes Good and Vinnie Makes Good were present at the time and place of the alleged offense. The government has the burden to prove beyond a reasonable doubt each of the elements of the offense of second degree murder, which may include that Antoine Makes Good and/or Vinnie Makes Good were present at the time and place of the alleged offense. However, keep in mind, as stated in Instruction No. 4, one does not have to be present at the scene of an event in order to become an aider and abettor.

If the government proves beyond a reasonable doubt all the essential elements of the offense charged as to a defendant, you must find that defendant guilty. If the government fails to prove beyond a reasonable doubt any essential element of the offense charged as to a defendant, you must find that defendant not guilty.

INSTRUCTION NO. 24 -

LESSER INCLUDED OFFENSE: VOLUNTARY MANSLAUGHTER

If you should unanimously find Antoine Makes Good and/or Vinnie Makes Good not guilty of the offense of second degree murder, or, if after reasonable efforts, you are unable to reach a unanimous verdict as to the offense of second degree murder, then you must proceed to determine whether either or both defendants is not guilty or guilty of the offense of voluntary manslaughter under this instruction. Voluntary manslaughter is a lesser included offense of second degree murder.

For you to find a defendant guilty of the lesser included offense of voluntary manslaughter, the government must prove the following essential elements beyond a reasonable doubt as to that defendant:

One, on or about November 1, 2020, Antoine Makes Good and/or Vinnie Makes Good voluntarily, intentionally and unlawfully killed Mr. O'Rourke;

Two, Antoine Makes Good and/or Vinnie Makes Good acted in the heat of passion caused by adequate provocation;

A defendant acted upon heat of passion 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 may result from anger, rage, resentment, terror or fear. A defendant's anger is not sufficient to establish heat of passion without an element of sudden provocation. The question is whether the defendant, while in such an emotional state, lost self-control and acted on impulse and without reflection.

Provocation must be sufficient to naturally induce a reasonable person in the passion of the moment to temporarily lose self-control and kill on impulse and without reflection. Personal violence may constitute adequate provocation, but trivial or slight provocation, entirely disproportionate to the violence of the retaliation, is not adequate provocation.

***Three*, Antoine Makes Good and Vinnie Makes Good are Indian persons and the offense took place in Indian country at Kyle, South Dakota.**

Counsel for the United States, counsel for Antoine Makes Good, Antoine Makes Good, counsel for Vinnie Makes Good and Vinnie Makes Good have agreed or stipulated that Antoine Makes Good and Vinnie Makes Good are Indian persons and the place where the alleged incident occurred is Kyle, South Dakota, in Indian country.

By entering into this agreement or stipulation, neither Antoine Makes Good nor Vinnie Makes Good has 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 Antoine Makes Good and Vinnie Makes Good are Indian persons and that, if the alleged incident occurred, it occurred in Indian country.

To find a defendant guilty of the offense of voluntary manslaughter, the government must prove all the essential elements beyond a reasonable doubt

as to that defendant. If the government proves all the essential elements beyond a reasonable doubt as to a defendant, you must find that defendant guilty. If the government fails to prove any essential element beyond a reasonable doubt as to a defendant, you must find that defendant not guilty.

Keep in mind you must give separate consideration to the evidence regarding each individual defendant.

INSTRUCTION NO. 25 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. Your verdict must be unanimous. It is your duty to consult with one another and to deliberate with a view of reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself, but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations, you should not hesitate to re-examine your own views and change your opinion if you become convinced it is wrong. To bring the jury to a unanimous result, you must examine the questions submitted to you openly and frankly with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish Antoine Makes Good's guilt or Vinnie Makes Good's guilt beyond a reasonable doubt, then your vote should be for a not guilty verdict as to that defendant. If all of you reach the same conclusion, the verdict of the jury must be not guilty as to that defendant. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes Antoine Makes Good's guilt or Vinnie Makes Good's guilt beyond a reasonable doubt, then your vote should be for a guilty verdict as to that defendant. If all of you reach that conclusion, the verdict of the jury must be guilty as to that defendant.

The question before you can never be whether the government wins or loses the case. The government, as well as society, always wins when justice is done, regardless of whether your verdict is not guilty or guilty.

Finally, remember that you are not partisans. You are judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. You may take all the time you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, then this case is left open and must be resolved at some later time.

INSTRUCTION NO. 26 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

First, when you go to the jury room, you must select one of your members as your foreperson, who will preside over your discussions and speak for you here in court.

Second, if Antoine Makes Good or Vinnie Makes Good is found guilty, the sentences to be imposed are my responsibility. You may not consider punishment in any way in deciding whether the government proved its case beyond a reasonable doubt as to the offenses charged in the indictment.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the court security officer, signed by one or more jurors. After conferring with the lawyers, I will respond as soon as possible, either in writing or orally in open court. Remember you should not tell anyone—including me—how your vote stands numerically.

Fourth, your verdict must be based solely on the evidence and on the law in these instructions. **The verdict, whether not guilty or guilty, must be unanimous.** Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Fifth, the verdict forms are simply the written notice of the decision you reach in this case. You will take these forms to the jury room. When you have unanimously agreed on the verdict, the foreperson will fill in the forms, date and sign them and advise the court security officer you have reached a verdict.

You will then return to the courtroom where your verdict will be received and announced.

Dated April 15, 2022.

BY THE COURT:



JEFFREY L. VIKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
vs.
ANTOINE JOEY MAKES GOOD,
Defendant.

CR. 20-50144-JLV

VERDICT

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

1. We unanimously find the defendant ANTOINE JOEY MAKES GOOD
(fill in either "not guilty" or "guilty") _____
of second degree murder as charged in the indictment.

*If you find the defendant "not guilty" or you are unable to reach a
unanimous verdict as to second degree murder, then you must
proceed to the lesser included offense of voluntary manslaughter.*

2. We unanimously find the defendant ANTOINE JOEY MAKES GOOD
(fill in either "not guilty" or "guilty") _____
of voluntary manslaughter.

Date

Foreperson

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VINNIE MAKES GOOD,

Defendant.

CR. 20-50144-JLV

VERDICT

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

1. We unanimously find the defendant VINNIE MAKES GOOD (fill in
either "not guilty" or "guilty") _____ of
second degree murder as charged in the indictment.

*If you find the defendant "not guilty" or you are unable to reach a
unanimous verdict as to second degree murder, then you must
proceed to the lesser included offense of voluntary manslaughter.*

2. We unanimously find the defendant VINNIE MAKES GOOD (fill in
either "not guilty" or "guilty") _____ of
voluntary manslaughter.

Date

Foreperson