

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JT MYORE,

Defendant.

5:21-CR-50108-1-RAL

FINAL JURY INSTRUCTIONS

INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions. The instructions I am about to give you now are in writing and will be available to you in the jury room.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important.

All instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 3

I have mentioned the word “evidence.” The “evidence” in this case consists of the testimony of witnesses, the documents and other things received as exhibits, and the facts that have been stipulated—that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

When you were instructed that evidence was received for a limited purpose, you must follow that instruction.

INSTRUCTION NO. 4

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony of any witness to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 5

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education, or experience, has become expert in some field may state his or her opinion on matters in that field and may also state the reasons for his or her 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's 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. 6

The superseding indictment contains two counts of carjacking, one count of robbery, one count of assault resulting in serious bodily injury, one count of assault with a dangerous weapon, and one count of brandishing a firearm during a crime of violence. The defendant has pleaded not guilty to those charges.

The superseding indictment is simply the document that formally charges the defendant with the crime for which he is on trial. The superseding indictment is not evidence of anything. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate, with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty. This presumption can be overcome only if the government proved during the trial, beyond a reasonable doubt, each element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial. Accordingly, the fact that a defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 7

The crime of carjacking as charged in Count I of the superseding indictment, has four elements, which are:

***One*, the defendant or someone the defendant aided and abetted took or attempted to take a red Toyota Celica from the presence of another;**

***Two*, the defendant or someone the defendant aided and abetted did so by means of force and violence or by intimidation;**

***Three*, the red Toyota Celica had been transported, shipped or received in interstate commerce; and**

***Four*, at or during the time the defendant or someone the defendant aided and abetted took or attempted to take the red Toyota Celica, the defendant or someone the defendant aided and abetted intended to cause death or serious bodily injury.**

A person may also be found guilty of carjacking even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of carjacking.

In order to have aided and abetted the commission of carjacking, the defendant must:

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

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

***Three*, have knowingly acted in some way for the purpose of aiding the commission of carjacking; and**

***Four*, have intended to cause death or serious bodily injury.**

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.

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

The term “commerce” includes, among other things, travel, trade and transportation. The phrase “interstate commerce” means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia.

“Serious bodily injury” means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the functions of a bodily member, organ or mental faculty.

If the government has proven all of these elements beyond a reasonable doubt as to the defendant, or if the government has proven beyond a reasonable doubt that all of the elements of carjacking were committed by some person or persons and that the defendant aided and abetted the commission of that crime, then you must find the defendant guilty of the crime of carjacking; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 8

The crime of robbery as charged in Count II of the superseding indictment, has five elements, which are:

***One*, on or about May 3, 2021, the defendant, JT Myore, took or attempted to take a thing of value from the person or presence of Robert Two Dogs;**

***Two*, the thing of value was a red Toyota Celica;**

***Three*, the taking or attempted taking was by force and violence or by intimidation;**

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

***Five*, the offense took place in Indian Country.**

A person may also be found guilty of robbery even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of robbery.

In order to have aided and abetted the commission of robbery, the defendant must:

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

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

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

If the government has proven all of these elements beyond a reasonable doubt as to the defendant, or if the government has proven beyond a reasonable doubt that all of the elements of robbery were committed by some person or persons and that the defendant aided and abetted the commission of that crime, then you must find the defendant guilty of the crime of robbery; otherwise you must find the defendant not guilty of this crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NO. 9

The crime of aiding and abetting an assault resulting in serious bodily injury as charged in Count III of the superseding indictment, has seven elements, which are:

***One*, on or about May 3, 2021, JJ Eagle Bull, Tyler Waters, or both, assaulted Robert Two Dogs;**

***Two*, as a result of that assault Robert Two Dogs suffered serious bodily injury;**

***Three*, the defendant, JT Myore, knew an assault resulting in serious bodily injury was being or going to be committed;**

***Four*, the defendant, JT Myore, had enough advance knowledge of the extent and character of assault resulting in serious bodily injury that he was able to make the relevant choice to walk away from the assault resulting in serious bodily injury before all elements of assault resulting in serious bodily injury were complete;**

***Five*, the defendant, JT Myore, knowingly acted in some way for the purpose of aiding the commission of assault resulting in serious bodily injury;**

***Six*, the defendant is an Indian; and**

***Seven*, the offense took place in Indian Country.**

“Assault” means any intentional and voluntary attempt or threat to injure another person, combined with the apparent present ability to do so, which is sufficient to put the other person in fear of immediate bodily harm or any intentional and voluntary harmful and offensive touching of another person without justification or excuse.

“Serious bodily injury” means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the functions of a bodily member, organ or mental faculty.

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.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find him guilty of the crime charged; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 10

The crime of aiding and abetting an assault with a dangerous weapon as charged in Count IV of the superseding indictment, has seven elements, which are:

***One*, on or about May 3, 2021, JJ Eagle Bull, Tyler Waters, or both, assaulted Robert Two Dogs with the specific intent to cause bodily harm;**

***Two*, a dangerous weapon, specifically a bat, was used in the assault;**

***Three*, the defendant, JT Myore, knew an assault with a dangerous weapon was being committed or going to be committed;**

***Four*, the defendant, JT Myore, had enough advance knowledge of the extent and character of assault with a dangerous weapon that he was able to make the relevant choice to walk away from the assault with a dangerous weapon before all elements of assault with a dangerous weapon were complete;**

***Five*, the defendant, JT Myore, knowingly acted in some way for the purpose of aiding the commission of assault with a dangerous weapon;**

***Six*, that the defendant is an Indian; and**

***Seven*, that the offense took place in Indian country.**

“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.

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.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find him guilty of the crime charged; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 11

The crime of carjacking as charged in Count V of the superseding indictment, has four elements, which are:

***One*, the defendant or someone the defendant aided and abetted took or attempted to take a black Ford Freestyle from the presence of another;**

***Two*, the defendant or someone the defendant aided and abetted did so by means of force and violence or by intimidation;**

***Three*, the black Ford Freestyle had been transported, shipped or received in interstate commerce; and**

***Four*, at or during the time the defendant or someone the defendant aided and abetted took or attempted to take the black Ford Freestyle, the defendant or someone the defendant aided and abetted intended to cause death or serious bodily injury.**

A person may also be found guilty of carjacking even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of carjacking.

In order to have aided and abetted the commission of carjacking a person must:

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

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

***Three*, have knowingly acted in some way for the purpose of aiding the commission of carjacking; and**

***Four*, have intended to cause death or serious bodily injury.**

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.

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

The term “commerce” includes, among other things, travel, trade and transportation. The phrase “interstate commerce” means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia.

“Serious bodily injury” means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the functions of a bodily member, organ or mental faculty.

If the government has proven all of these elements beyond a reasonable doubt as to the defendant, or if the government has proven beyond a reasonable doubt that all of the elements of carjacking were committed by some person or persons and that the defendant aided and abetted the commission of that crime, then you must find the defendant guilty of the crime of carjacking; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

The crime of use of a firearm in furtherance of a crime of violence as charged in Count VI of the superseding indictment, has two elements:

One, the defendant committed the crime of carjacking as charged in Count V of the superseding indictment; and

Two, the defendant knowingly carried, used or brandished a firearm during and in relation to that crime.

A person may also be found guilty of use of a firearm in furtherance of a crime of violence even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of use of a firearm in furtherance of a crime of violence.

In order to have aided and abetted the commission of use of a firearm in furtherance of a crime of violence, the United States must prove beyond a reasonable doubt:

One, the crime of carjacking was committed as charged in Count V;

Two, that a firearm was carried, used or brandished to perpetrate the carjacking;

Three, that the defendant, JT Myore, facilitated the firearm use, the carjacking or both; and

Four, that the defendant, JT Myore, had advance knowledge that RJ Running Shield would use or carry or brandish a firearm during and in relation to the carjacking.

You must first consider the evidence pertaining to Count V of the superseding indictment and determine whether the government has proved Count V beyond a reasonable doubt. If you reach a verdict of guilty on carjacking as charged in Count V, only then may you consider this charge. If your verdict was not guilty on Count V, you must return a verdict of not guilty on this charge.

The term “firearm” means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

You may find that a firearm was “carried” during the commission of the crime if you find that a person had a firearm on his person.

The phrase “used a firearm” means that the firearm was actively employed in the course of the commission of the crime. You may find that a firearm was used during the commission of the crime if you find that it was brandished or fired.

The term “brandish” means to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person.

In determining whether a person carried and/or used or whether a person brandished a firearm, you may consider all of the facts received in evidence in the case including the nature of the underlying crime of violence alleged, the proximity of the defendant to the firearm in question, the usefulness of the firearm to the crime alleged, and the circumstances surrounding the presence of the firearm.

If the government has proven all of these elements beyond a reasonable doubt as to the defendant, or if the government has proven beyond a reasonable doubt that all of the elements of the offense were committed by some person or persons and that the defendant aided and abetted the commission of that crime, then you must find the defendant guilty of the crime of use of a firearm in furtherance of a crime of violence; otherwise you must find the defendant not guilty of this crime. If you find the defendant guilty of this crime, then you must determine on the verdict form if he, or someone he aided and abetted, carried, used, and/or brandished the firearm in committing the offense charged in Count V.

INSTRUCTION NO. 13

The crimes charged in Counts I, II, and V of the indictment include an attempt to commit the offense. A person may be found guilty of an attempt if he intended to commit the offense and voluntarily and intentionally carried out some act which was a substantial step toward committing that offense.

A substantial step, as used in this instruction, 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.

INSTRUCTION NO. 14

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant in connection with the offense, and all the facts and circumstances in evidence which may aid in a determination of the defendant's knowledge or 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. 15

The superseding indictment in this case alleges that the defendant is an Indian and that the alleged offenses occurred in Indian country. The existence of those two factors is necessary in order for this Court to have jurisdiction over the crimes charged in Counts II, III, and IV of the superseding indictment.

The United States must prove beyond a reasonable doubt that the defendant is an Indian, in order for the defendant to be proven guilty of the offenses charged in Counts II, III, and IV. The United States must prove:

One, that the defendant has some degree of Indian blood; and

Two, that the defendant is recognized as an Indian person by a tribe or the federal government, or both.

In determining whether the defendant is recognized as an Indian person by a tribe or the federal government, you may consider the following factors among others. No one factor is dispositive.

1. Whether the defendant is an enrolled member of a tribe or band.
2. Whether a government recognizes the defendant as an Indian by providing assistance reserved only to Indians.
3. Whether the defendant enjoys benefits of tribal affiliation.
4. Whether the defendant lives on a reservation or participates in Indian social life.

It is not necessary that all of these factors be present. Rather, the jury is to consider all of the evidence in determining whether the government has proved beyond a reasonable doubt that the defendant is an Indian.

INSTRUCTION NO. 16

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 17

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

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

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

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

Fifth, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, Snapchat, LinkedIn, Instagram, YouTube, or X (formerly known as Twitter), to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Sixth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>JT MYORE,</p> <p>Defendant.</p>	<p>5:21-CR-50108-1-RAL</p> <p>VERDICT FORM</p>
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find the defendant JT Myore, _____ (fill in either “not guilty” or “guilty”) of carjacking as charged in Count I of the superseding indictment.
2. We find the defendant JT Myore, _____ (fill in either “not guilty” or “guilty”) of robbery as charged in Count II of the superseding indictment.
3. We find the defendant JT Myore, _____ (fill in either “not guilty” or “guilty”) of assault resulting in serious bodily injury as charged in Count III of the superseding indictment.
4. We find the defendant JT Myore, _____ (fill in either “not guilty” or “guilty”) of assault with a dangerous weapon as charged in Count IV of the superseding indictment.
5. We find the defendant JT Myore, _____ (fill in either “not guilty” or “guilty”) of carjacking as charged in Count V of the superseding indictment.
6. We find the defendant JT Myore, _____ (fill in either “not guilty” or “guilty”) of using a firearm during and in relation to a crime of violence as charged in Count VI of the superseding indictment.
 - 6.A. *(Complete if and only if you find the defendant “guilty” of using a firearm during and in relation to a crime of violence as charged in Count VI of the second superseding indictment.)*

We find, beyond a reasonable doubt, that the defendant, JT Myore: (place an "X" or check mark in the space provided next to the word or words that you find apply, using the beyond a reasonable doubt standard)

_____ carried or used

_____ brandished

a firearm in connection with commission of the crimes charged in Count VI.

Dated September ____, 2023

Foreperson