

DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

UNITED STATES OF AMERICA,  Plaintiff,  vs.  ISAAC ROUBIDEAUX,  Defendant.	CR. 21-50175-JLV  PRIMARY JURY INSTRUCTIONS
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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 defendant, Isaac Roubideaux. Mr. Roubideaux is charged with discharging a firearm during a crime of violence, assault with a dangerous weapon, assault resulting in serious bodily injury, three counts of failure to register as a sex offender and two counts of possession of a firearm by a prohibited person. Your duty is to decide from the evidence whether Mr. Roubideaux is not guilty or guilty of the offenses charged against him.

You will find the facts from the evidence presented in court. “Evidence” is defined in Instruction No. 19. 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 Mr. Roubideaux, not anyone else, is on trial here. Also, remember Mr. Roubideaux is on trial only for the offenses charged against him, not for anything else.

**INSTRUCTION NO. 3 –**

**DESCRIPTION OF THE OFFENSES**

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 offenses charged in the indictment. However, I must first explain some preliminary matters.

The charges against Mr. Roubideaux are set out in an indictment. An indictment is simply an accusation. It is not evidence of anything. Mr. Roubideaux pled not guilty to the charges brought against him. Mr. Roubideaux is presumed to be innocent unless and until the government proves, beyond a reasonable doubt, each element of the offenses charged.

The indictment charges the offenses were committed “on or about” a certain date. The government does not have to prove with certainty the exact date of an offense charged. 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 offenses charged in the indictment.

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

**INSTRUCTION NO. 4 -**

**COUNT I: DISCHARGE OF A FIREARM DURING  
A CRIME OF VIOLENCE**

**Elements**

For you to find Mr. Roubideaux guilty of the offense of discharge of a firearm during a crime of violence as charged in Count I of the indictment, the government must prove the following essential elements beyond a reasonable doubt:

***One, Mr. Roubideaux committed the offense of assault with a dangerous weapon as charged in Count II; and***

***Two, on or about November 18, 2021, in Indian country at Pine Ridge, South Dakota, Mr. Roubideaux knowingly discharged a firearm during and in relation to assault with a dangerous weapon as charged in Count II.***

To find Mr. Roubideaux guilty of the offense of discharge of a firearm during a crime of violence as charged in Count I of the indictment, the government must prove all the essential elements beyond a reasonable doubt. If the government proves all the essential elements beyond a reasonable doubt, you must find Mr. Roubideaux guilty of that offense. If the government fails to prove any essential element beyond a reasonable doubt, you must find Mr. Roubideaux not guilty of that offense.

**INSTRUCTION NO. 5 -**

**COUNT II: ASSAULT WITH A DANGEROUS WEAPON**

**Elements**

For you to find Mr. Roubideaux guilty of the offense of assault with a dangerous weapon as charged in Count II of the indictment, the government must prove the following essential elements beyond a reasonable doubt:

***One, on or about November 18, 2021, Mr. Roubideaux unlawfully assaulted William Brewer;***

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

***Two, Mr. Roubideaux used a dangerous weapon, 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.

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

***Three, Mr. Roubideaux intended to inflict bodily harm to Mr. Brewer;***

“Intent to inflict bodily harm” means knowingly and intentionally doing an act for the purpose of causing another person to suffer bodily injury.

**and**



**Four, Mr. Roubideaux is an Indian person and the offense took place at Pine Ridge in Indian country in the District of South Dakota.**

To find Mr. Roubideaux guilty of the offense of assault with a dangerous weapon as charged in Count II of the indictment, the government must prove all the essential elements beyond a reasonable doubt. If the government proves all the essential elements beyond a reasonable doubt, you must find Mr. Roubideaux guilty of that offense. If the government fails to prove any essential element beyond a reasonable doubt, you must find Mr. Roubideaux not guilty of that offense.

**INSTRUCTION NO. 6 -**

**COUNT III: ASSAULT RESULTING IN SERIOUS BODILY INJURY**

**Elements**

For you to find Mr. Roubideaux guilty of the offense of assault resulting in serious bodily injury as charged in Count III of the indictment, the government must prove the following essential elements beyond a reasonable doubt:

**One, on or about November 18, 2021, Mr. Roubideaux unlawfully assaulted William Brewer;**

The definition of “assault” for purposes of Count III means any voluntary attempt or threat to do injury to the person of another, which when coupled with the apparent present ability to do so, is sufficient to put the person against whom the attempt is made in fear of immediate bodily harm.

**Two, the assault resulted in serious bodily injury to Mr. Brewer;**

“Serious bodily injury” means bodily injury which involves:

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

**and**

**Three, Mr. Roubideaux is an Indian person and the offense took place at Pine Ridge in Indian country in the District of South Dakota.**

To find Mr. Roubideaux guilty of the offense of assault resulting in serious bodily injury as charged in Count III of the indictment, the government must prove all the essential elements beyond a reasonable doubt. If the government proves all the essential elements beyond a reasonable doubt, you must find Mr. Roubideaux guilty of that offense. If the government fails to prove any essential element beyond a reasonable doubt, you must find Mr. Roubideaux not guilty of that offense.

**INSTRUCTION NO. 7 –**

**STIPULATION REGARDING INDIAN PERSON AND INDIAN COUNTRY**

Counsel for the United States government, counsel for Mr. Roubideaux and Mr. Roubideaux have agreed or stipulated that Mr. Roubideaux is an Indian person and that the place where the alleged incidents occurred, if they occurred at all, is at Pine Ridge, South Dakota, in Indian country.

By entering into this agreement or stipulation, Mr. Roubideaux has not admitted his guilt of any of the offenses 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 Mr. Roubideaux is an Indian person and that if the alleged incidents occurred, they occurred in Indian country.

**This stipulation applies to Count II, assault with a dangerous weapon, and Count III, assault resulting in serious bodily injury in these instructions.**

**INSTRUCTION NO. 8 –**

**COUNT IV: FAILURE TO REGISTER AS A SEX OFFENDER**

**Elements**

For you to find Mr. Roubideaux guilty of the offense of failure to register as a sex offender as charged in Count IV of the indictment, the government must prove the following essential elements beyond a reasonable doubt:

***One, Mr. Roubideaux is required to register under the Sex Offender***

***Registration and Notification Act;***

The registration requirements of the Sex Offender Registration and Notification Act are explained in Instruction No. 11.

***Two, Mr. Roubideaux is a sex offender by reason of a conviction under federal law;***

***Three, on or about between August 8, 2021, and November 18, 2021, Mr. Roubideaux knowingly failed to register or update a registration as required under the Sex Offender Registration and Notification Act;***

The requirements to update a registration under the Sex Offender Registration and Notification Act are explained in Instruction No. 11.

**and**

***Four, while in a not registered or not updated status, Mr. Roubideaux committed a crime of violence.***

The term “crime of violence” means an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.

To find Mr. Roubideaux guilty of the offense of failure to register as a sex offender as charged in Count IV of the indictment, the government must prove all the essential elements beyond a reasonable doubt. If the government proves all the essential elements beyond a reasonable doubt, you must find Mr. Roubideaux guilty of that offense. If the government fails to prove any essential element beyond a reasonable doubt, you must find Mr. Roubideaux not guilty of that offense.

**INSTRUCTION NO. 9 –**

**COUNT V: FAILURE TO REGISTER AS A SEX OFFENDER**

**Elements**

For you to find Mr. Roubideaux guilty of the offense of failure to register as a sex offender as charged in Count V of the indictment, the government must prove the following essential elements beyond a reasonable doubt:

***One, Mr. Roubideaux is required to register under the Sex Offender***

***Registration and Notification Act;***

The registration requirements of the Sex Offender Registration and Notification Act are explained in Instruction No. 11.

***Two, Mr. Roubideaux is a sex offender by reason of a conviction under federal law; and***

***Three, on or about between August 8, 2021, and November 18, 2021, Mr. Roubideaux knowingly failed to register or update a registration as required under the Sex Offender Registration and Notification Act;***

The requirements to update a registration under the Sex Offender Registration and Notification Act are explained in Instruction No. 11.

To find Mr. Roubideaux guilty of the offense of failure to register as a sex offender as charged in Count V of the indictment, the government must prove all the essential elements beyond a reasonable doubt. If the government proves all the essential elements beyond a reasonable doubt, you must find Mr. Roubideaux guilty of that offense. If the government fails to prove any essential

element beyond a reasonable doubt, you must find Mr. Roubideaux not guilty of that offense.



**INSTRUCTION NO. 10 –**

**COUNT VI: FAILURE TO REGISTER AS A SEX OFFENDER**

**Elements**

For you to find Mr. Roubideaux guilty of the offense of failure to register as a sex offender as charged in Count VI of the indictment, the government must prove the following essential elements beyond a reasonable doubt:

***One, Mr. Roubideaux is required to register under the Sex Offender***

***Registration and Notification Act;***

The registration requirements of the Sex Offender Registration and Notification Act are explained in Instruction No. 11.

***Two, Mr. Roubideaux is a sex offender by reason of a conviction under federal law; and***

***Three, on or about between February 24, 2020, and April 13, 2020, Mr. Roubideaux knowingly failed to register or update a registration as required under the Sex Offender Registration and Notification Act;***

The requirements to update a registration under the Sex Offender Registration and Notification Act are explained in Instruction No. 11.

To find Mr. Roubideaux guilty of the offense of failure to register as a sex offender as charged in Count V of the indictment, the government must prove all the essential elements beyond a reasonable doubt. If the government proves all the essential elements beyond a reasonable doubt, you must find Mr. Roubideaux guilty of that offense. If the government fails to prove any essential

element beyond a reasonable doubt, you must find Mr. Roubideaux not guilty of that offense.

**INSTRUCTION NO. 11 –  
REQUIREMENTS UNDER THE  
SEX OFFENDER REGISTRATION AND NOTIFICATION ACT**

An individual is required to register under the Sex Offender Registration and Notification Act if he is classified as a “sex offender” as defined by federal law. “Sex offender” means an individual who was convicted of a sex offense. A “sex offense” includes a criminal offense that has an element involving a sexual act or sexual contact with another. A “criminal offense” means a state, local, tribal, foreign, or military offense or other criminal offense.

The Sex Offender Registration and Notification Act requires that a sex offender register, and keep his registration current, in each jurisdiction where he resides, where he is an employee and where he is a student. The term “resides” means the location of the individual’s home or other place where the individual habitually lives.

To update a registration, a sex offender is required, not later than three business days after each change of name, residence, employment or student status, to appear in person in the pertinent jurisdiction and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry.

**INSTRUCTION NO. 12 -**

**COUNT VII: POSSESSION OF A FIREARM OR AMMUNITION**

**BY A PROHIBITED PERSON**

**Elements**

For you to find Mr. Roubideaux guilty of the offense of possession of a firearm or ammunition by a prohibited person as charged in Count VII of the indictment, the government must prove the following essential elements beyond a reasonable doubt:

**One, on or about November 18, 2021, at Pine Ridge, in the District of South Dakota, Mr. Roubideaux knowingly possessed a firearm, that is, a Savage, .22LR, bearing serial number 3486068 or ammunition for that firearm;**

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

The term “ammunition” means cartridge or ammunition cases, primers, bullets, or propellant powder designed for use in any firearm.

**Two, that prior to November 18, 2021, the firearm and ammunition had been shipped or transported in interstate commerce;**  
**and**

**Three, that Mr. Roubideaux was prohibited from possessing a firearm and ammunition as the result of one or both of the following circumstances:**

1. Prior criminal conviction:
  - a. Prior to November 18, 2021, Mr. Roubideaux had been convicted of a crime punishable by imprisonment for a term exceeding one year; and
  - b. Prior to November 18, 2021, Mr. Roubideaux knew he had been convicted of a crime punishable by imprisonment for a term exceeding one year;
  
2. Unlawful user of a controlled substance:
  - a. On November 18, 2021, Mr. Roubideaux was an unlawful user of a controlled substance; and
  - b. On November 18, 2021, Mr. Roubideaux knew he was an unlawful user of a controlled substance.

“Unlawful user of a controlled substance” means a person who regularly uses a controlled substance in a manner other than as prescribed by a licensed physician. Mr. Roubideaux must have actively and regularly used a controlled substance during the time he allegedly possessed the firearm or ammunition, but the law does not require that he used the controlled substance at the precise time he allegedly possessed the firearm or ammunition. You may draw an inference that Mr. Roubideaux is an unlawful user of a controlled substance from a pattern of use or possession of a controlled substance that reasonably covers the time he allegedly possessed the firearm or ammunition.

Methamphetamine is a Schedule II controlled substance.

To find Mr. Roubideaux guilty of the offense of possession of a firearm or ammunition by a prohibited person as charged in Count VII of the indictment, the government must prove all the essential elements beyond a reasonable doubt. If the government proves all the essential elements beyond a reasonable doubt, you must find Mr. Roubideaux guilty of that offense. If the government

fails to prove any essential element beyond a reasonable doubt, you must find Mr. Roubideaux not guilty of that offense.

**INSTRUCTION NO. 13 -**

**COUNT VIII: POSSESSION OF A FIREARM BY A PROHIBITED PERSON**

**Elements**

For you to find Mr. Roubideaux guilty of the offense of possession of a firearm by a prohibited person as charged in Count VIII of the indictment, the government must prove the following essential elements beyond a reasonable doubt:

***One, on or about September 26, 2021, at Pine Ridge, in the District of South Dakota, Mr. Roubideaux knowingly possessed a firearm, that is, a KEL-TEC, .22 caliber handgun, bearing serial number WXPV66;***

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

***Two, that prior to September 26, 2021, the firearm had been shipped or transported in interstate commerce;***

**and**

***Three, that Mr. Roubideaux was prohibited from possessing a firearm as the result of one or both of the following circumstances:***

1. Prior criminal conviction:
  - a. Prior to September 26, 2021, Mr. Roubideaux had been convicted of a crime punishable by imprisonment for a term exceeding one year; and
  - b. Prior to September 26, 2021, Mr. Roubideaux knew he had been convicted of a crime punishable by imprisonment for a term exceeding one year;

2. Unlawful user of a controlled substance:
  - a. On September 26, 2021, Mr. Roubideaux was an unlawful user of a controlled substance; and
  - b. On September 26, 2021, Mr. Roubideaux knew he was an unlawful user of a controlled substance.

“Unlawful user of a controlled substance” means a person who regularly uses a controlled substance in a manner other than as prescribed by a licensed physician. Mr. Roubideaux must have actively and regularly used a controlled substance during the time he allegedly possessed the firearm, but the law does not require that he used the controlled substance at the precise time he allegedly possessed the firearm. You may draw an inference that Mr. Roubideaux is an unlawful user of a controlled substance from a pattern of use or possession of a controlled substance that reasonably covers the time he allegedly possessed the firearm.

Methamphetamine is a Schedule II controlled substance.

To find Mr. Roubideaux guilty of the offense of possession of a firearm by a prohibited person as charged in Count VIII of the indictment, the government must prove all the essential elements beyond a reasonable doubt. If the government proves all the essential elements beyond a reasonable doubt, you must find Mr. Roubideaux guilty of that offense. If the government fails to prove any essential element beyond a reasonable doubt, you must find Mr. Roubideaux not guilty of that offense.



**INSTRUCTION NO. 14 -  
OTHER STIPULATIONS**

Counsel for the government, counsel for Mr. Roubideaux and Mr. Roubideaux have agreed or stipulated that:

1. On April 18, 2016, Mr. Roubideaux had a conviction for sex abuse of a minor under federal law and that Mr. Roubideaux knew he had been convicted of a sex offense;
2. As the result of the sex offense conviction Mr. Roubideaux knew he was required to register under the Sex Offender Registration and Notification Act from April 18, 2016, to present;
3. The April 18, 2016, conviction was punishable by imprisonment for a term exceeding one year and that Mr. Roubideaux knew on or about February 24, 2020, through November 18, 2021, he had been convicted of an offense punishable by imprisonment exceeding one year;
4. That the Savage, .22LR, bearing serial number 3486068, and the KEL-TEC, .22 caliber handgun, bearing serial number WXPV66, were both a "firearm," meaning they were a weapon which is designed to or may be readily converted to expel a projectile by the action of an explosive; and
5. That the Savage, .22LR, the ammunition for that firearm and the KEL-TEC, .22 caliber handgun were manufactured outside of the State of South Dakota, and they moved in interstate commerce before their presence in the State of South Dakota.

By entering into this agreement or stipulation, Mr. Roubideaux has not admitted his guilt of any of the offenses charged and you may not draw any inference of guilt from the stipulation. The only purpose of this stipulation is to establish the facts that (1) Mr. Roubideaux has a previous conviction for a sex offense; (2) Mr. Roubideaux knew he had been convicted of a sex offense; (3) Mr. Roubideaux knew he was required to register under the Sex Offender Registration and Notification Act; (4) the offense of conviction was punishable by imprisonment exceeding one year; (5) Mr. Roubideaux knew he had been convicted of an offense punishable by imprisonment for a term exceeding one year; (6) the Savage, .22LR, bearing serial number 3486068, and the KEL-TEC, .22 caliber handgun were both firearms; and (7) both firearms and the ammunition for the Savage, .22LR were both shipped or transported in interstate commerce before their presence in the state of South Dakota.

**This stipulation applies to Count IV, failure to register as a sex offender; Count V, failure to register as a sex offender; Count VI, failure to register as a sex offender; Count VII, possession of a firearm or ammunition by a prohibited person; and Count VIII, possession of a firearm by a prohibited person.**

**INSTRUCTION NO. 15 -**

**POSSESSION**

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is in constructive possession of it. A person's mere presence at the location where a thing is found is not enough, without more, to establish constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" is used in these instructions it includes actual as well as constructive possession and sole as well as joint possession.

**INSTRUCTION NO. 16-**

**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 Mr. Roubideaux 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 Mr. Roubideaux’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 Mr. Roubideaux 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. 17 -**

**PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF**

Mr. Roubideaux is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of Mr. Roubideaux or the fact he is here in court. The presumption of innocence remains with Mr. Roubideaux throughout the trial. This presumption alone is sufficient to find Mr. Roubideaux not guilty. The presumption of innocence may be overcome only if the government proves, beyond a reasonable doubt, each essential element of the offenses charged. The burden is always on the government to prove guilt beyond a reasonable doubt. This burden never shifts to Mr. Roubideaux 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. Mr. Roubideaux is not even obligated to cross examine the witnesses called to testify by the government.

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

If the government proves beyond a reasonable doubt all the essential elements of the offenses charged, you must find Mr. Roubideaux guilty. If the government fails to prove beyond a reasonable doubt any essential element of the offenses charged, you must find Mr. Roubideaux not guilty.

**INSTRUCTION NO. 18 –  
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 Mr. Roubideaux's guilt. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

**INSTRUCTION NO. 19 –  
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. 20 –  
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. 21 –  
IMPEACHMENT**

In Instruction No. 20, 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. 22 –  
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. 20 and No. 21 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 Mr. Roubideaux before you may find him guilty. If you are not convinced beyond a reasonable doubt that Mr. Roubideaux committed an offense, you must find him not guilty of that offense.

**INSTRUCTION NO. 23 –**

**STATEMENT BY THE DEFENDANT**

You may hear testimony Mr. Roubideaux 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.

**INSTRUCTION NO. 24 –**

**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. 25 –  
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. 26 –  
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. 27 –**

**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. 28 –  
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. 29 –**

**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. 30 –  
OUTLINE OF THE TRIAL**

The trial will proceed as follows:

After these instructions, the lawyer for the government may make an opening statement. Next, the lawyer for Mr. Roubideaux may, but does not have to, make an opening statement. 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 lawyer for Mr. Roubideaux may, but has no obligation to, cross examine them. Following the government's case, Mr. Roubideaux may, but does not have to, present evidence or call witnesses. If Mr. Roubideaux 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 May 17, 2022.

BY THE COURT:

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JEFFREY L. VIKEN  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

UNITED STATES OF AMERICA,  Plaintiff,  vs.  ISAAC ROUBIDEAUX,  Defendant.	CR. 21-50175-JLV  SUPPLEMENTAL JURY INSTRUCTIONS
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**INSTRUCTION NO. 31 -**

**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. 32 -  
REQUIREMENTS UNDER THE  
SEX OFFENDER REGISTRATION AND NOTIFICATION ACT**

This instruction replaces Instruction No. 11 of the court's primary instructions.

An individual is required to register under the Sex Offender Registration and Notification Act ("SORNA") if he is classified as a "sex offender" as defined by federal law. "Sex offender" means an individual who was convicted of a sex offense. A "sex offense" includes a criminal offense that has an element involving a sexual act or sexual contact with another. A "criminal offense" means a federal, state, local, tribal, foreign, or military offense or other criminal offense.

SORNA requires that a sex offender register, and keep his registration current, in each jurisdiction where he resides, where he is an employee and where he is a student. The term "resides" means the location of the individual's home or other place where the individual habitually lives.

To update a registration, a sex offender is required, not later than three business days after each change of name, residence, employment or student status, to appear in person in the pertinent jurisdiction and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry.

It is a defense to a prosecution for failure to register or update a SORNA registration when:

- (a) circumstances beyond the control of Mr. Roubideaux's control prevented him from complying with the SORNA requirements;
- (b) Mr. Roubideaux did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply with SORNA; and
- (c) Mr. Roubideaux complied with the SORNA requirements to register or update his registration as soon as such circumstances ceased to exist.

Mr. Roubideaux has the burden of establishing this defense by a preponderance of the evidence. This standard means Mr. Roubideaux must prove the defense is more likely true than untrue. This is a lower standard than proof beyond a reasonable doubt. The government does not have the burden of disproving Mr. Roubideaux's defense.

**INSTRUCTION NO. 33 –**

**FLIGHT**

The intentional flight of a defendant immediately after the commission of a crime, or after he is accused of a crime that has been committed, is not of course sufficient in itself to establish his guilt; but is a fact which, if proved, may be considered by the jury in the light of all other evidence in the case, in determining guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within the province of the jury.

**INSTRUCTION NO. 34 –  
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 Mr. Roubideaux's guilt beyond a reasonable doubt on an offense charged against him, then your vote should be for a not guilty verdict as to that offense. If all of you reach the same conclusion, the verdict of the jury must be not guilty as to that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes Mr. Roubideaux's guilt beyond a reasonable doubt on an offense charged, then your vote should be for a verdict of

guilty as to that offense. If all of you reach that conclusion, the verdict of the jury must be guilty as to that offense.

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. 35 -  
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 Mr. Roubideaux is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government proved its case beyond a reasonable doubt as to any offense 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 votes stand 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 form is simply the written notice of the decision you reach in this case. You will take this form to the jury room. When you have

unanimously agreed on the verdict, the foreperson will fill in the form, date and sign it 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 May 19, 2022.

BY THE COURT:



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JEFFREY L. VIKEN  
UNITED STATES DISTRICT JUDGE