

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAMUEL FRANCIS WHITE HORSE,

Defendant.

3:20-CR-30058-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

The Indictment in this case charges the defendant with four crimes. The defendant is charged with second degree murder, assault with a dangerous weapon, assault resulting in serious bodily injury, and tampering with evidence. The defendant has pleaded not guilty to these charges.

The Indictment is simply the document that formally charges the defendant with the crimes for which he is on trial. The 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 United States proved during the trial, beyond a reasonable doubt, each element of the crimes charged.

Please remember that only the defendant, not anyone else, is on trial here, and that the defendant is on trial only for the crimes charged, not for anything else.

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

INSTRUCTION NO. 6

The crime of murder in the second degree, as charged in Count I of the Indictment, has five elements, which are:

***One*, on or about the 12th day of February, 2020, the defendant unlawfully caused the death of Lawrence Lafferty or aided and abetted Jerome White Horse, Jr., in doing so;**

***Two*, the defendant did so with malice aforethought;**

***Three*, that the defendant is an Indian;**

***Four*, the killing occurred in Indian Country; and**

***Five*, the defendant was not acting in self-defense or defense of others.**

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

INSTRUCTION NO. 7

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

Malice may be established by evidence of conduct which is reckless and wanton, and a gross deviation from a reasonable standard of care, of such a nature that a jury is warranted in inferring that the defendant was aware of a serious risk of death or serious bodily harm.

In determining whether Lawrence Lafferty was unlawfully killed with malice aforethought, you should consider all the evidence concerning the facts and circumstances preceding, surrounding and following the killing which tend to shed light upon the question of intent.

INSTRUCTION NO. 8

If you unanimously find the defendant “not guilty” of second degree murder or if after reasonable efforts you are unable to determine the guilt or innocence of the defendant as to the crime of second degree murder as charged in Count I of the Indictment should you consider this instruction.

The crime of voluntary manslaughter is a lesser included offense of second degree murder as charged in Count I of the Indictment. The crime of voluntary manslaughter has five elements, which are:

One, on or about the 12th day of February, 2020, the defendant voluntarily, intentionally, and unlawfully caused the death of Lawrence Lafferty or aided and abetted Jerome White Horse, Jr., in doing so;

Two, the defendant acted in the heat of passion caused by adequate provocation, as defined in Jury Instruction No. 9;

Three, the defendant is an Indian;

Four, the offense took place in Indian country; and

Five, the defendant was not acting in self-defense or defense of others.

If all of these elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the lesser included offense of voluntary manslaughter; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 9

The 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. The question is whether the defendant, while in such an emotional state, lost self-control and acted on impulse and without reflection.

Provocation, in order to be adequate under the law, must be such as would naturally induce a reasonable person in the passion of the moment to temporarily lose self-control and kill on impulse and without reflection. A blow or other personal violence may constitute adequate provocation, but trivial or slight provocation, entirely disproportionate to the violence of the retaliation, is not adequate provocation.

It must be such provocation as would arouse a reasonable person.

INSTRUCTION NO. 10

The crime of assault with a dangerous weapon, as charged in Count II of the Indictment, has five elements, which are:

One, on or about the 12th day of February, 2020, the defendant assaulted Lawrence Lafferty with the specific intent to cause bodily harm, or aided and abetted Jerome White Horse, Jr., in doing so;

Two, that the assault involved the use of a dangerous weapon, specifically a garden hoe;

Three, that the defendant is an Indian;

Four, that the alleged offense took place in Indian country; and

Five, the defendant was not acting in self-defense or defense of others.

If you find unanimously that the government has proved all of these elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime. Otherwise, you must find the defendant not guilty of this offense.

The term “dangerous weapon” as used in this instruction means an object with the capacity to endanger life or inflict bodily harm and used in a manner likely to do so.

INSTRUCTION NO. 11

The crime of Assault Resulting in Serious Bodily Injury, as charged in Count III of the Indictment, has five elements, which are:

One, on or about the 12th day of February, 2020, the defendant assaulted Lawrence Lafferty, or aided and abetted Jerome White Horse, Jr., in doing so;

Two, that the assault resulted in serious bodily injury;

Three, that the defendant is an Indian;

Four, that the offense took place in Indian country; and

Five, the defendant was not acting in self-defense or defense of others.

If you find unanimously that the government has proved all of these elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime. Otherwise, you must find the defendant not guilty of this offense.

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

INSTRUCTION NO. 12

If you unanimously find the defendant “not guilty” of assault resulting in serious bodily injury or if after reasonable efforts you are unable to determine guilt or innocence of the defendant as to the crime of assault resulting in serious bodily injury as charged in Count III of the Indictment, you should consider this instruction.

The crime of assault by striking, beating, or wounding is a lesser included offense of assault resulting in serious bodily injury as charged in Count III of the Indictment. The crime of assault by striking, beating, or wounding, has four elements, which are:

One, on or about the 12th day of February, 2020, the defendant assaulted Lawrence Lafferty by means of striking, beating, or wounding, or aided and abetted Jerome White Horse, Jr., in doing so;

Two, the assault happened in Indian country;

Three, the defendant is an Indian;

Four, the defendant was not acting in self-defense or defense of others.

To find the defendant guilty of the lesser included offense of assault by striking, beating, or wounding, the government must prove all of these elements beyond a reasonable doubt. If you the government has proved all of these elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime. Otherwise, you must find the defendant not guilty of this offense.

INSTRUCTION NO. 13

The term “assault” as used in these instructions 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.

INSTRUCTION NO. 14

Counts I, II, and III of the Indictment also charge the defendant with aiding and abetting Jerome White Horse, Jr., in the commission of those offenses. The defendant may be found guilty of second degree murder, the lesser included offense of voluntary manslaughter, assault with a dangerous weapon, assault resulting in serious bodily injury, and assault by striking, beating, or wounding even if he personally did not do every act constituting the offenses charged.

In order to show that the defendant aided and abetted the commission of second degree murder, the lesser included offense of voluntary manslaughter, assault with a dangerous weapon, assault resulting in serious bodily injury, and the lesser included offense of assault by striking, beating, or wounding, the United States must prove beyond a reasonable doubt, before or at the time the offenses were committed, that the defendant:

1. knew that the offenses were being committed or going to be committed;
2. had enough advance knowledge of the extent and character of the offenses that he was able to make the relevant choice to walk away from the offenses before all elements of the offenses were complete;
3. knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of the offenses;
4. for the offense charged in Count I, second degree murder, acted with malice aforethought, as referenced in Jury Instruction No. 7;
5. for the lesser included offense of Count I, voluntary manslaughter, voluntarily, intentionally, and unlawfully caused the death of Lawrence Lafferty and in the heat of passion caused by adequate provocation;
6. for the offense charged in Count II, assault with a dangerous weapon, acted with specific intent to do bodily harm; and
7. for the offense charged in Count III, assault resulting in serious bodily injury, acted intentionally.
8. For the lesser included offense of Count III, assault by striking, beating, or wounding, acted intentionally.

For you to find the defendant guilty of second degree murder, the lesser included offense of voluntary manslaughter, assault with a dangerous weapon, assault resulting in serious bodily injury, or the lesser included offense of assault by striking, wounding, or beating by reason of aiding and abetting, the United States must prove beyond a reasonable doubt that all of the elements of those crimes were committed by some person or persons and that the defendant aided and abetted the commission of those crimes.

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. 15

The 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 Count I, Count II, and Count III of the Indictment as well as the lesser included offenses of voluntary manslaughter and assault by striking, beating, or wounding.

A person is considered an “Indian” if that person has some Indian blood and if the person is recognized as an Indian. A person is generally recognized to be an “Indian” if that person is enrolled as a member in a federally recognized Indian tribe. The Cheyenne River Sioux Tribe is a federally recognized Indian tribe.

Cherry Creek, in Ziebach County, South Dakota, is, and was during the relevant time period, within what is considered “Indian country.” It is for you to decide whether the defendant committed the Indian country offenses charged and, if so, whether such offenses occurred at Cherry Creek, in Ziebach County, South Dakota.

INSTRUCTION NO. 16

If a person reasonably believes force is necessary to protect himself or another person from what he reasonably believes to be unlawful physical harm about to be inflicted by another and uses that force, then he acted in self-defense or the defense of others. If a person acts in self-defense or defense of others, he is not guilty of the offenses charged in Count I, Count II, or Count III as well as the lesser included offenses of voluntary manslaughter and assault by striking, beating, or wounding.

However, self-defense or defense of others which involves the use of force likely to cause death or great bodily harm is justified only if the person reasonably believes the force is necessary to protect himself or a third person from what he reasonably believes to be a substantial risk of death or great bodily harm.

The burden is on the government to prove beyond a reasonable doubt that the defendant was not acting in self-defense or the defense of others during the incident alleged.

INSTRUCTION NO. 17

The crime of tampering with evidence, as charged in Count IV of the Indictment, has three essential elements, which are:

***One*, on or about the 12th day of February, 2020, the defendant altered or concealed an object, that is, a garden hoe used during an assault on Lawrence Lafferty, or attempted to do so;**

***Two*, the defendant acted corruptly in doing so; and**

Acting “corruptly” means to act with a consciousness of wrongdoing.

***Three*, the defendant acted with the intent to impair the garden hoe’s integrity or availability for use in an official proceeding.**

An “official proceeding” includes a proceeding before a federal judge, federal court, or federal grand jury. An official proceeding need not be pending or about to be instituted at the time of the offense, but the defendant must have contemplated the proceeding. If the defendant lacks knowledge that his actions are likely to affect an official proceeding, he lacks the requisite intent to tamper with evidence.

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

INSTRUCTION NO. 18

The crime charged in Count IV of the Indictment, tampering with evidence, includes an attempt to tamper with evidence. The defendant may be found guilty of an attempt if he intended to corruptly alter or conceal an object to impair its integrity or availability for use in an official proceeding and voluntarily and intentionally carried out some act which was a substantial step toward that concealment or impairment.

INSTRUCTION NO. 19

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

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

INSTRUCTION NO. 20

You have heard testimony that the defendant made a statement to others. It is for you to decide:

First, whether the defendant made the statement.

Second, if so, how much weight you should give it.

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. 21

You have heard the testimony of law enforcement officers. The fact that a witness is employed as a law enforcement officer does not mean that his or her testimony necessarily deserves more or less consideration or greater or lesser weight than that of any other witness.

INSTRUCTION NO. 22

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

INSTRUCTION NO. 23

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education, or experience, have 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'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. 24

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. 25

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 United States 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 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, Instagram, YouTube, or 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
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. SAMUEL FRANCIS WHITE HORSE, Defendant.	3:20-CR-30058-RAL VERDICT FORM
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find Defendant Samuel Francis White Horse _____ (fill in either “guilty” or “not guilty”) of the crime of second degree murder as charged in Count I of the Indictment.

[Skip if you find the defendant “guilty” in Part 1 above.] If you find that the defendant is “not guilty” of second degree murder as charged in Count I of the Indictment, or if you are unable to reach a verdict on the offense charge in Count I of the Indictment after all reasonable efforts, then you must answer the following:

- a. We find Defendant Samuel Francis White Horse _____ (fill in either “guilty” or “not guilty”) of the crime of voluntary manslaughter under Instruction No. 8.
2. We find Defendant Samuel Francis White Horse _____ (fill in either “guilty” or “not guilty”) of the crime of assault with a dangerous weapon as charged in Count II of the Indictment.
3. We find Defendant Samuel Francis White Horse _____ (fill in either “guilty” or “not guilty”) of the crime of assault resulting in serious bodily injury as charged in Count III of the Indictment.

[Skip if you find the defendant “guilty” in Part 1 above.] If you find that the defendant is “not guilty” of assault resulting in serious bodily injury as charged in Count III of the Indictment, or if you are unable to reach a verdict on the offense charged in Count III of the Indictment after all reasonable efforts, then you must answer the following:

- a. We find Defendant Samuel Francis White Horse _____ (fill in either “guilty” or “not guilty”) of the crime of assault by striking, wounding, or beating under Instruction No. 12.

4. We find Defendant Samuel Francis White Horse _____ (fill in either “guilty” or “not guilty”) of the crime of tampering with evidence as charged in Count IV of the Indictment.

Dated June ____, 2021

Foreperson