

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. JOSEPH THOMPSON, SR., Defendant.</p>	<p>3:23-CR-30055-RAL FINAL JURY INSTRUCTIONS</p>
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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.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that 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.

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 Joseph Thompson, Sr. with one count of second-degree murder. The Defendant has pleaded not guilty to this charge.

The Indictment is simply the document that formally charges the Defendant with the crime 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 government proved during the trial, beyond a reasonable doubt, each element of a crime 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 the Defendant to prove that he is innocent. Instead, the burden of proof remains on the government 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 second degree murder, as charged in the Indictment, has six essential elements, which are:

***One*, that on or about the 25th day of March, 2023, the Defendant, Joseph Thompson, Sr., unlawfully killed Marty LaRoche;**

***Two*, the Defendant did so with malice aforethought as defined in Instruction No. 7;**

***Three*, the Defendant did not cause the death of Marty LaRoche in the heat of passion caused by adequate provocation as defined in Instruction No. 9;**

***Four*, the offense took place in Indian Country;**

***Five*, the Defendant is an Indian; and**

***Six*, the Defendant did not act in self-defense or defense of others as defined in Instruction No. 11.**

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. 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 Defendant Joseph Thompson, Sr. unlawfully killed Marty LaRoche 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 the Indictment, you then must consider whether Defendant is guilty or not guilty of voluntary manslaughter as set forth in this instruction.

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

One, on or about the 25th day of March, 2023, the Defendant, Joseph Thompson, Sr., voluntarily, intentionally, and unlawfully killed Marty LaRoche;

Two, the Defendant acted in the heat of passion caused by adequate provocation, as defined in 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

You may also consider any evidence of flight by the Defendant, along with all the evidence in this case, and you may consider whether this evidence shows consciousness of guilt and determine the significance to be attached to any such conduct. 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. In your consideration of the evidence of flight you should consider that there may be reasons for this which are fully consistent with innocence.

INSTRUCTION NO. 11

If a person reasonably believes that force is necessary to protect himself or others from what he reasonably believes to be unlawful physical harm about to be inflicted by another and uses such force, then he acted in self-defense or in defense of others.

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

INSTRUCTION NO. 12

Intent 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 a 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. The United States is not required to prove that the Defendant knew that his acts or omissions were unlawful.

An act is done knowingly if the Defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the Defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 13

The Indictment in this case alleges that the Defendant is an Indian and that the alleged offense occurred in Indian country. The existence of those two factors is necessary in order for this Court to have jurisdiction over the crime charged in the Indictment.

Counsel for the United States, counsel for the Defendant, and the Defendant have agreed or stipulated that the Defendant is an Indian and that the place where the alleged incident is claimed to have occurred is in Indian country.

The Defendant has not, by entering this agreement or stipulation, admitted his guilt of the offense charged, and you may not draw any inference of guilt from the stipulation. The only effect of this stipulation is to establish the facts that the Defendant is an Indian and that the place where the alleged offense is claimed to have occurred is in Indian country.

INSTRUCTION NO. 14

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. 15

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. 16

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 telephone, 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
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<p>UNITED STATES OF AMERICA, Plaintiff, vs. JOSEPH THOMPSON, SR., Defendant.</p>	<p>3:23-CR-30055-RAL 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 Joseph Thompson, Sr., _____ (fill in either “not guilty” or “guilty”) of second degree Murder as charged in the Indictment.

If and only if, you found the Defendant “not guilty” or you are not able to reach a verdict after all reasonable efforts as to question 1, proceed to question 2.

2. We find the Defendant Joseph Thompson, Sr., _____ (fill in either “not guilty” or “guilty”) of the lesser included offense of voluntary manslaughter.

Dated July____, 2023

Foreperson