

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. JESSE J. WALN, Defendant.</p>	<p>3:17-CR-30004-2-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.

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. You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 5

The indictment in this case charges the defendant with five different crimes. Count III charges the defendant with burglary. Counts IV and V charge the defendant with larceny. Counts VI and VII charge the defendant with possession of stolen firearms. The defendant has pleaded not guilty to each of those 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 government proved during the trial, beyond a reasonable doubt, each element of a crime charged.

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

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial.

INSTRUCTION NO. 6

The crime of first degree burglary, as charged in Count III of the indictment, has six elements, which are:

***One*, that on or about between the 11th day of November, 2016, and the 13th day of November, 2016, the defendant, Jesse Waln, unlawfully entered or unlawfully remained in a structure described as the home of Beau Westover or that Jesse Waln aided and abetted some person who did so;**

***Two*, the premises were not, at the time, open to the public nor was the defendant or someone the defendant aided and abetted licensed or privileged to enter or remain;**

***Three*, the structure was an occupied structure;**

“Occupied structure” means any structure which is the permanent or temporary habitation of any person, whether or not any person is actually present.

***Four*, the defendant or someone the defendant aided and abetted unlawfully entered or unlawfully remained therein with the intent to commit the crime of larceny;**

“Larceny” is defined in Instruction No. 7.

***Five*, the defendant or someone the defendant aided and abetted committed the offense of first degree burglary in the nighttime;**

“Nighttime” means the period between 30 minutes after sunset and 30 minutes before sunrise.

and

***Six*, the defendant is an Indian and the offense took place in Indian country.**

A person may be found guilty of first degree burglary even though he personally did not do every act constituting the offense charged, if he aided and abetted in some person committing all of the elements of first degree burglary.

In order for the defendant to have aided and abetted the commission of the crime of first degree burglary as charged in Count III of the indictment, the government must prove beyond a reasonable doubt that before or at the time the crime was committed:

***One*, that the defendant knew that first degree burglary was being committed or going to be committed;**

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

Three, that the defendant knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of first degree burglary; and

Four, that the defendant intended that the crime be committed.

For you to find the defendant guilty of first degree burglary by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the elements of first degree burglary were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

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

INSTRUCTION NO. 7

The crime of larceny, as charged in Count IV of the indictment, has five elements, which are:

***One*, that on or about between the 11th day of November, 2016, and the 13th day of November, 2016, the defendant, Jesse Waln, unlawfully took and carried away the personal property of Beau Westover;**

***Two*, that the defendant intended to steal or purloin the personal property;**

***Three*, that the personal property had a value in excess of \$1,000;**

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

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

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. 8

The crime of larceny, as charged in Count V of the indictment, has five elements, which are:

***One*, that on or about between the 11th day of November, 2016, and the 13th day of November, 2016, the defendant, Jesse Waln, unlawfully took and carried away the personal property of Keller Electric;**

***Two*, that the defendant intended to steal or purloin the personal property;**

***Three*, that the personal property had a value in excess of \$1,000;**

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

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

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. 9

If you should unanimously find the defendant “Not Guilty” of the crime of larceny as charged in Count V of the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to Count V of the indictment, then you must proceed to determine whether the defendant is guilty or not guilty as to the lesser offense of larceny involving personal property with a value of \$1,000 or less.

The crime of larceny involving personal property with a value of \$1,000 or less has five elements, which are:

One, that on or about between the 11th day of November, 2016, and the 13th day of November, 2016, the defendant, Jesse Waln, unlawfully took and carried away the personal property of Keller Electric;

Two, that the defendant intended to steal or purloin the personal property;

Three, that the personal property had a value of \$1,000 or less;

Four, that the defendant is an Indian; and

Five, that the offense took place in Indian country.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find him guilty of larceny involving personal property with a value of \$1,000 or less; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 10

The defendant is charged in Counts IV and V not only with committing the crime of larceny but also with aiding and abetting the crime of larceny. A person may be found guilty of larceny even though he personally did not do every act constituting the offense charged, if he aided and abetted the commission of larceny.

In order for the defendant to have aided and abetted the commission of the crime of larceny as charged in Counts IV and V of the indictment, or for the lesser included crime to Count V, the government must prove beyond a reasonable doubt that before or at the time the crime was committed:

One, that the defendant knew that larceny was being committed or going to be committed;

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

Three, that the defendant knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of larceny; and

Four, that the defendant intended that the crime of larceny be committed.

For you to find the defendant guilty of larceny by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the elements of larceny were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

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

INSTRUCTION NO. 11

The crime of possession of a stolen firearm, as charged in Count VI of the indictment, has four elements, which are:

***One*, that on or about between the 11th day of November, 2016, and the 24th day of November, 2016, the defendant, Jesse Waln, knowingly possessed, received, concealed, stored, bartered, sold, or disposed of a firearm, to wit: a Savage .204 caliber rifle bearing serial number J365798;**

***Two*, that the firearm was stolen;**

***Three*, that the defendant knew or had reasonable cause to believe that the firearm was stolen; and**

***Four*, that the firearm at some time had been shipped or transported in interstate commerce.**

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. 12

The crime of possession of a stolen firearm, as charged in Count VII of the indictment, has four elements, which are:

***One*, that on or about between the 11th day of November, 2016, and the 17th day of November, 2016, the defendant, Jesse Waln, knowingly possessed, received, concealed, stored, bartered, sold, or disposed of a firearm, to wit: a Benelli SuperNova 12 gauge shotgun, bearing serial number Z718035H14;**

***Two*, that the firearm was stolen;**

***Three*, that the defendant knew or had reasonable cause to believe that the firearm was stolen; and**

***Four*, that the firearm at some time had been shipped or transported in interstate commerce.**

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. 13

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 knowledge or intent.

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

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his actions were unlawful. 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. 14

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

INSTRUCTION NO. 15

You have heard evidence about a burglary and larceny that occurred at the home of Patricia “Pat” Burnette and Peggy Diekhoff in May of 2016. Defendant is not on trial for any alleged offense from May of 2016. This evidence was received for the limited purpose of explaining part of the Rosebud Sioux Tribe Law Enforcement investigation and questioning of the defendant and the defendant’s knowledge concerning possibly stolen items. You cannot infer from that evidence that the defendant is guilty of the crimes charged here.

You also have heard evidence concerning methamphetamine possession and use by certain witnesses and by the defendant. The defendant is not on trial for any methamphetamine offense. You may use that testimony only to evaluate the testimony of certain witnesses and to understand circumstances surrounding the alleged crimes at issue. You cannot infer from that evidence that the defendant is guilty of the crimes charged.

INSTRUCTION NO. 16

You have heard evidence that Jeremy Waln, Dominic Stoneman, Ronald Moran, Danielle White Eyes, and Dakota Marshall have entered into plea agreements and pleaded guilty to crimes arising out of events for which the defendant is on trial. Further, you have heard evidence that Dakota Marshall and Danielle White Eyes have cooperation agreements with the government under which they hope to receive reduced sentences as a result of cooperating. The testimony from Ronald Moran, Danielle White Eyes, and Dakota Marshall was received in evidence and may be considered by you. You may give their testimony such weight, if any, as you think it deserves. Whether or not Danielle White Eyes or Dakota Marshall's testimony may have been influenced by their cooperation agreements with the government is for you to determine.

The guilty pleas by Jeremy Waln, Dominic Stoneman, Ronald Moran, Danielle White Eyes, and Dakota Marshall are not evidence of this defendant's guilt. The guilty pleas can be considered by you only for the purpose of determining how much, if at all, to rely upon the witnesses' testimony.

INSTRUCTION NO. 17

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 the indictment.

Counsel for the government, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that the place where the alleged incidents are claimed to have occurred is in Indian country.

The defendant has not, by entering this agreement or stipulation, admitted his guilt 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 the defendant is an Indian and that the place where the alleged offenses are claimed to have occurred is in Indian country.

INSTRUCTION NO. 18

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. 19

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

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

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

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

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

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

<p>UNITED STATES OF AMERICA, Plaintiff, vs. JESSE J. WALN, Defendant.</p>	<p>3:17-CR-30004-2-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 Jesse Waln, _____ (fill in either “not guilty” or “guilty”) of the burglary count charged in Count III of the indictment.
2. We find the defendant Jesse Waln, _____ (fill in either “not guilty” or “guilty”) of the larceny count charged in Count IV of the indictment.
3. We find the defendant Jesse Waln, _____ (fill in either “not guilty” or “guilty”) of the larceny count charged in Count V of the indictment.

3.A. ***Answer if, and only if, you found the defendant “not guilty” as to larceny as charged in Count V, or if, after all reasonable efforts, you are unable to reach a verdict as to larceny as charged in Count V.***
We find the defendant Jesse Waln, _____ (fill in either “not guilty” or “guilty”) of the lesser offense of larceny involving personal property with a value of \$1,000 or less.
4. We find the defendant Jesse Waln, _____ (fill in either “not guilty” or “guilty”) of possession of a stolen firearm as charged Count VI of the indictment.
5. We find the defendant Jesse Waln, _____ (fill in either “not guilty” or “guilty”) of possession of a stolen firearm as charged Count VII of the indictment.

Dated January ____, 2018

Foreperson