

# APPENDIX D

## INSTRUCTION NO. 11

Mr. Antonio is charged with second-degree murder, a violation of 18 U.S.C. section 1111.

This law makes it a crime to unlawfully kill a human being with malice aforethought.

To find Mr. Antonio guilty of this crime, you must be convinced that the government has proved beyond a reasonable doubt:

*First:* Mr. Antonio caused the death of the victim named in the indictment;

*Second:* Mr. Antonio killed the victim with malice aforethought;

*Third:* the killing took place within the territorial jurisdiction of the United States; and

*Fourth:* Mr. Antonio is a member of a federally recognized Indian tribe.

To kill “with malice aforethought” means either to kill another person deliberately and intentionally, or to act with callous and wanton disregard for human life. To find malice aforethought, you need not be convinced that Mr. Antonio hated the person killed, or felt ill will toward the victim at the time.

It is not necessary for the government to prove that Mr. Antonio acted with premeditated intent to kill. Premeditation is typically associated with killing in cold blood, and requires a period of time in which the accused deliberates or thinks the matter over before acting.

You are instructed that the alleged murder occurred within the territorial jurisdiction of the United States, if you find beyond a reasonable doubt that such offense occurred at the intersection of Highway 313 and Wilda Drive, in Bernalillo County, in the District of New Mexico.

**UNITED STATES REQUESTED INSTRUCTION NO. 17, at 26, filed April 10, 2017 (Doc. 58)(modified)**

**UNITED STATES REQUESTED INSTRUCTION NO. 20, at 30, filed April 10, 2017 (Doc. 58)(modified)**

Source: 10th Cir. Pattern Jury Instructions § 2.53 (2011)(as modified)

Source: 18 U.S.C. § 1151; *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527-534 (1998)

#### INSTRUCTION NO. 14

If you unanimously find Mr. Antonio not guilty of the offense charged, or if, after all reasonable efforts, you are unable to agree on a verdict as to that offense, then you must determine whether Mr. Antonio is guilty or not of involuntary manslaughter.

The difference between these two offenses is that, to convict Mr. Antonio of involuntary manslaughter, the government does not have to prove malice aforethought. This is an element of the greater offense, but not of the lesser included offense. Second degree murder involves reckless and wanton disregard for human life that is extreme in nature, while involuntary manslaughter involves reckless and wanton disregard that is not extreme in nature.

For you to find Mr. Antonio guilty of involuntary manslaughter, the government must prove each of the following elements beyond a reasonable doubt:

*First:* Mr. Antonio caused the death of the victim named in the indictment;

*Second:* the victim was killed while Mr. Antonio was committing an unlawful act -- drinking and driving -- not amounting to a felony or the victim was killed while Mr. Antonio was committing a lawful act in an unlawful manner, or without due caution and circumspection, which act might produce death;

*Third:* the killing took place within the territorial jurisdiction of the United States; and

*Fourth:* Mr. Antonio is a member of a federally recognized Indian tribe.

In order to prove this offense, the government need not prove that Mr. Antonio specifically intended to cause the death of the victim. But it must prove more than that Mr. Antonio was merely negligent or that he failed to use reasonable care. The government must prove gross negligence amounting to wanton and reckless disregard for human life.

You are instructed that the alleged involuntary manslaughter occurred within the territorial jurisdiction of the United States, if you find beyond a reasonable doubt that such offense occurred at the intersection of Highway 313 and Wilda Drive, in Bernalillo County, in the District of New Mexico.

If you are convinced that the government has proved all of these elements beyond a reasonable doubt, you may find Mr. Antonio guilty of the lesser included offense. If you have a reasonable doubt about any of these elements, then you must find Mr. Antonio not guilty of the lesser included offense.

Source: 10th Cir. Pattern Jury Instructions §§ 1.33 and 2.54.1 (2011)(as modified)