

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
NOV 15 2007
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UNITED STATES OF AMERICA,

CR 07-10004

Plaintiff,

-vs-

RICHARD STEELE,

Defendant.

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JURY INSTRUCTIONS

INSTRUCTION NO. 1

Ladies and gentlemen of the jury, it is my duty now to explain the rules of law you must apply to this case.

You as jurors are the sole judges of the facts. But it is your duty to follow the law stated in these instructions, and to apply that law to the facts as you find them from the evidence before you. It would be a violation of your sworn duty to base your verdicts upon any rules of law other than the ones given you in these instructions, regardless of your personal feelings as to what the law ought to be.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

INSTRUCTION NO. 2

You have been chosen and sworn as jurors to try the issues of fact presented by the allegations of the indictment and the denials made by the defendant in his pleas of “not guilty.” You are to perform this duty without bias or prejudice, because the law does not permit jurors to be governed by sympathy or public opinion. The accused and the public expect that you will carefully and impartially consider all of the evidence and will follow the law as stated by the Court, in order to reach just verdicts, regardless of the consequences to any party.

INSTRUCTION NO. 3

The indictment in this case charges that the defendant committed the crimes of first degree burglary, assault resulting in serious bodily injury, assault with a dangerous weapon, and assaulting, resisting or impeding a federal officer. The defendant has pleaded not guilty to these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Therefore, the defendant, even though charged, begins the trial with no evidence against him. This presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged.

There is no burden upon the defendant to prove that he is innocent.

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

INSTRUCTION NO. 4

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 5

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.

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 and questions that I struck from the record, or told you to disregard, are not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally you were instructed that some evidence was received for a limited purpose only and you must follow such instructions.

INSTRUCTION NO. 6

There are two types of evidence from which you may find the truth as to the facts of a case--direct evidence and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct evidence or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

INSTRUCTION NO. 7

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 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. 8

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of a greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

INSTRUCTION NO. 9

You have heard testimony from a person described as an expert. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state opinions on matters in that field and may also state the reasons for those opinions.

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. 10

The crime of first degree burglary, as charged in Count 1 of the indictment, has five essential elements, which are:

1. On or about March 2, 2007, the defendant unlawfully entered or unlawfully remained in an occupied structure described as the residence of Pearl Three Legs;
2. The defendant unlawfully entered or unlawfully remained in the residence with the intent to commit the crime of assault;
3. The defendant inflicted or attempted to inflict physical harm on another;
4. The defendant is an Indian; and
5. The alleged offense took place in Indian Country.

For you to find the defendant guilty of this crime as charged in Count 1 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt.

Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 11

The crime of assault resulting in serious bodily injury, as charged in Count 2 of the indictment, has five essential elements, which are:

1. On or about March 2, 2007, the defendant voluntarily and intentionally assaulted Pearl Three Legs;
2. The assault resulted in serious bodily injury to Pearl Three Legs;
3. The defendant was not acting in self defense as defined in Instruction No 19. However, the government need not prove lack of self defense if the defendant unlawfully entered or unlawfully remained in the residence;
4. The defendant is an Indian; and
5. The alleged offense took place in Indian Country.

For you to find the defendant guilty of this crime as charged in Count 2 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt.

Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

“Serious bodily injury” as used in the indictment and Instruction No. 11 means bodily injury which involves:

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

INSTRUCTION NO. 12

The crime of assault with a dangerous weapon, as charged in Count 3 of the indictment, has five essential elements, which are:

1. On or about December 28, 2006, the defendant without just cause or excuse voluntarily and intentionally assaulted Ivory Three Legs with a dangerous weapon;
2. Shod feet were used and are a dangerous weapon;
3. The defendant assaulted Ivory Three Legs with intent to do bodily harm to Ivory Three Legs;
4. The defendant is an Indian; and
5. The offense took place in Indian country.

For you to find the defendant guilty of this crime as charged in Count 3 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt.

Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 14

The crime of Assaulting, Resisting, or Impeding a Federal Officer, as charged in Count 4 of the indictment, has five essential elements, which are:

1. On or about December 15, 2006, in McLaughlin, in the District of South Dakota, the defendant forcibly assaulted, resisted, impeded, intimidated, or interfered with Doug Wilkerson under circumstances constituting more than simple assault;
2. At the time of the assault, Doug Wilkerson was engaged in his official duties as a law enforcement officer employed by the Bureau of Indian Affairs, Department of Interior. The Court has determined, as a matter of law, that Doug Wilkerson was a federal law enforcement officer on December 15, 2006.
3. The act or acts were done voluntarily and intentionally.
4. The defendant inflicted bodily injury on Doug Wilkerson.
5. The defendant was not acting in self defense, as defined in Instruction No. 19.

For you to find the defendant guilty of this crime charged in Count 4 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

“Simple assault” as used above means an assault which does not involve actual physical contact or serious bodily injury.

“Bodily injury” as used above means (A) a cut, abrasion, or bruise, (B) physical pain, or (C) any other injury to the body, no matter how temporary.

INSTRUCTION NO. 15

The crime of Assaulting, Resisting, or Impeding a Federal Officer, as charged in Count 5 of the indictment, has four essential elements, which are:

1. On or about December 15, 2006, in McLaughlin, in the District of South Dakota, the defendant forcibly assaulted, resisted, impeded, intimidated, or interfered with Doug Wilkerson under circumstances constituting more than simple assault;
2. At the time of the assault, Doug Wilkerson was engaged in his official duties as a law enforcement officer employed by the Bureau of Indian Affairs, Department of Interior. The Court has determined, as a matter of law, that Doug Wilkerson was a federal law enforcement officer on December 15, 2006.
3. The act or acts were done voluntarily and intentionally.
4. The defendant was not acting in self defense, as defined in Instruction No. 19.

For you to find the defendant guilty of this crime charged in Count 5 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

“Simple assault” as used above means an assault which does not involve actual physical contact or serious bodily injury.

If and only if you have found the defendant “not guilty” as to Count 4 as explained in Instruction No. 14 may you consider Count 5. In other words, you may not convict on both Counts 4 and 5.

INSTRUCTION NO. 16

The crime of assault with a dangerous weapon, as charged in Count 6 of the indictment, has five essential elements, which are:

1. On or about January 16, 2006, the defendant without just cause or excuse voluntarily and intentionally assaulted Ivory Three Legs with a dangerous weapon;
2. Shod feet or brass knuckles were used and the item used is a dangerous weapon;
3. The defendant assaulted Ivory Three Legs with intent to do bodily harm to Ivory Three Legs;
4. The defendant is an Indian; and
5. The offense took place in Indian country.

For you to find the defendant guilty of this crime as charged in Count 6 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt.

Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 17

The crime of assault with a dangerous weapon, as charged in Count 7 of the indictment, has five essential elements, which are:

1. On or about October 1, 2005, the defendant without just cause or excuse voluntarily and intentionally assaulted Ivory Three Legs with a dangerous weapon;
2. A knife was used and is a dangerous weapon;
3. The defendant assaulted Ivory Three Legs with intent to do bodily harm to Ivory Three Legs;
4. The defendant is an Indian; and
5. The offense took place in Indian country.

For you to find the defendant guilty of this crime as charged in Count 7 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt.

Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 18

The phrase "dangerous weapon" as used in Instruction Nos. 13, 16, and 17, means any object capable of being readily used by one person to inflict bodily injury upon another person.

INSTRUCTION NO. 19

If a person reasonably believes that 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 such force, then he acted in self defense or defense of others.

However, self defense which 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 the third person from what he reasonably believes to be a substantial risk of death or great bodily harm.