

**FILED**

AUG 30 2007

  
CLERK

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,  
Plaintiff,

No. CR 07-50055-01-KES

vs.

**FINAL  
INSTRUCTIONS  
TO THE JURY**

JASON DILLON,  
Defendant.

**TABLE OF CONTENTS**

NO. 1 - INTRODUCTION .....	1
NO. 2 - COUNT 1 - ASSAULT ON A FEDERAL OFFICER WITH A DANGEROUS WEAPON .....	2
NO. 3 - SELF-DEFENSE .....	6
NO. 4 - INTOXICATION .....	7
NO. 5 - FLIGHT .....	8
NO. 6 - IMPEACHMENT .....	9
NO. 7 - IMPEACHMENT BY PRIOR CONVICTION .....	10
NO. 8 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF ..	11
NO. 9 - REASONABLE DOUBT .....	12
NO. 10 - DUTY TO DELIBERATE .....	13
NO. 11 - DUTY DURING DELIBERATIONS .....	15
VERDICT .....	17

FINAL INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 - COUNT 1 - ASSAULT ON A FEDERAL OFFICER  
WITH A DANGEROUS WEAPON

**Count 1** of the indictment charges that, on or about April 21, 2007, at Batesland, in the District of South Dakota, Jason Dillon used a dangerous weapon to forcibly assault, resist, oppose, impede, intimidate, and interfere with Oglala Sioux Department of Public Safety Police Officer Willie J. Thompson, Jr., a federal officer, while Officer Thompson was performing his official duties.

***Elements***

For you to find Jason Dillon guilty of assault on a federal officer with a dangerous weapon, as charged in **Count 1** of the indictment, the government must prove each of the following four essential elements beyond a reasonable doubt:

***One, that the defendant forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with Oglala Sioux Department of Public Safety Officer Willie J. Thompson, Jr., with a dangerous weapon;***

An "assault" is any intentional and voluntary attempt or threat to do injury to the person of another, when coupled with the apparent present ability to do so sufficient to put the person against whom the attempt is made in fear of immediate bodily harm.

"Forcibly" means by use of force. Physical force is sufficient but actual physical force is not required. You may also find that a person who, in fact, has the present ability to inflict bodily harm upon another and who threatens or attempts to inflict bodily harm upon such person acts forcibly. In such case, the threat must be a present one. Even if there is no physical contact, the force

requirement is satisfied if the defendant's conduct places the officer in fear for his life or safety.

A "dangerous weapon" is an object used in a manner likely to endanger life or inflict serious bodily harm. A weapon intended to cause death or danger but that fails to do so because of a defective component is a dangerous weapon.

The term "serious bodily injury" means bodily injury which involves: a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

**Two, that the act was done voluntarily and intentionally;**

**Three, that at the time of the act, Willie J. Thompson, Jr., was an Oglala Sioux Department of Public Safety Officer and was doing what he was employed by the federal government to do; and**

"Doing what he was employed by the federal government to do" means that the officer was acting within the scope of what he is employed to do; it is not defined by whether the officer is abiding by the laws and regulations in effect at the time of the incident. The test is whether the officer is acting within his area of responsibility, that is, whether the officer's actions fall within the agency's overall mission, and that he was not engaging in a personal frolic of his own.

**Four, that the defendant was not acting in self-defense.**

"Self-defense" is defined for you in Final Instruction No. 3.

For you to find the defendant guilty of assault on a federal officer with a dangerous weapon, 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 offense.

***Lesser Included Offense - Assault on a Federal Officer***

If your verdict under these instructions is not guilty of assault on a federal officer with a dangerous weapon, or if, after all reasonable efforts, you are unable to reach a verdict on this instruction, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of assault on a federal officer under this instruction. The crime of assault on a federal officer, a lesser included offense of the crime charged in **Count 1** of the indictment, has the following four essential elements:

***One, that the defendant forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with Oglala Sioux Department of Public Safety Officer Willie J. Thompson, Jr.;***

The word “assault” is defined above.

The word “forcibly” is defined above.

***Two, that the act was done voluntarily and intentionally;***

***Three, that at the time of the act, Willie J. Thompson, Jr., was an Oglala Sioux Department of Public Safety Officer and was doing what he was employed by the federal government to do; and***

“Doing what he was employed by the federal government to do” is defined above.

***Four, that the defendant was not acting in self-defense.***

“Self-defense” is defined for you in Final Instruction No. 3.

For you to find the defendant guilty of the crime of assault on a federal officer, the government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

FINAL INSTRUCTION NO. 3 - SELF-DEFENSE

In regard to the crime of assault, resistance, opposition, impediment, intimidation or interference with a federal officer with a dangerous weapon as alleged in **Count 1**, defendant asserts that he was acting in self-defense. If defendant did not know the official status of the person assaulted, resisted, opposed, impeded, intimidated or interfered with and if defendant obviously believed that he was being attacked, defendant would be allowed to use reasonable force to defend himself. Defendant, however, may not use more force than is necessary to defend himself.

The government may answer defendant's assertion of self-defense, if in addition to proving the first three essential elements of the offense charged as previously given to you in Final Instruction No. 2, the government also proves, beyond a reasonable doubt, one of the following two propositions:

**One, at the time of the conduct charged in the indictment, defendant actually knew that the individual identified in the indictment as a federal officer was a government officer; or**

**Two, the force used by defendant was excessive and would not have been justified even if the person identified in the indictment as a federal officer was a private citizen and not a federal officer.**

The government must prove beyond a reasonable doubt that defendant did not act in lawful self-defense.

FINAL INSTRUCTION NO. 4 - INTOXICATION

One of the issues in this case is whether defendant was intoxicated at the time the acts charged in the indictment were committed. Being under the influence of alcohol provides a legal excuse for the commission of a crime only if the effect of the alcohol makes it impossible for defendant to have understood that the individual identified in the indictment was a federal officer. Evidence that defendant acted while under the influence of alcohol may be considered by you, together with all the other evidence, in determining whether or not defendant knew that Officer Willie J. Thompson, Jr., was a federal officer.



FINAL INSTRUCTION NO. 5 - FLIGHT

You may also consider any evidence of flight by defendant, along with all of the evidence in the case, and you may consider whether this evidence shows a consciousness of guilt and determine the significance to be attached to any such conduct. Whether or not evidence of flight shows 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.

FINAL INSTRUCTION NO. 6 - IMPEACHMENT

In Preliminary Instruction 7, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight you think it deserves.

FINAL INSTRUCTION NO. 7 - IMPEACHMENT BY PRIOR CONVICTION

You have heard evidence that the defendant, Jason Dillon, was previously convicted of a crime. You may use that evidence only to help you decide whether to believe his testimony and how much weight to give it. The evidence does not mean that he committed the crime here, and you must not use that evidence as any proof of the crime charged in this case.

FINAL INSTRUCTION NO. 8 - PRESUMPTION OF INNOCENCE  
AND BURDEN OF PROOF

Jason Dillon is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with Mr. Dillon throughout the trial. That presumption alone is sufficient to find him not guilty. The presumption of innocence may be overcome as to Mr. Dillon only if the government proves, beyond a reasonable doubt, each element of the crime charged against him.

The burden is always upon the government to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the government.

Unless the government proves beyond a reasonable doubt that Jason Dillon committed each and every element of the offense charged in the indictment against him, you must find him not guilty of that offense.

FINAL INSTRUCTION NO. 9 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence or lack of evidence produced by the government. 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 in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

FINAL INSTRUCTION NO. 10 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. Your verdict as to the defendant must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on the offense charged against him, then the defendant should have your vote for a not guilty verdict on the offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on the offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on the offense charged, then your vote should be for a verdict of guilty against the defendant on the charge,

and if all of you reach that conclusion, then the verdict of the jury must be guilty for the defendant on the charge. As I instructed you earlier, the burden is upon the government to prove beyond a reasonable doubt every essential element of the crime charged.

Remember also that the question before you can never be whether the government wins or loses the case. The government, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

FINAL INSTRUCTION NO. 11 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

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

*Third*, 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.**

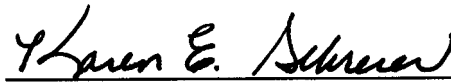
*Fourth*, your verdict must be based solely on the evidence and on the law in these instructions. **The verdict, whether not guilty or guilty, must be unanimous.** Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

*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.

Dated August 30, 2007.

A handwritten signature in black ink, reading "Karen E. Schreier". The signature is written in a cursive style and is positioned above a horizontal line.

Karen E. Schreier  
Chief Judge