

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
APR 30 2008
[Signature]
CLERK

UNITED STATES OF AMERICA,

CR 08-10009

Plaintiff,

-vs-

JURY INSTRUCTIONS

ANESSA WHITE EAGLE,
ANNA LISA WHITE EAGLE,
LORNA ARCHAMBAULT, and
MILES BO YELLOW EARRINGS,

Defendants.

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 defendants in their 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 defendants committed the crimes of assault with a dangerous weapon and burglary. The defendants have 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 defendants are presumed to be innocent. Therefore, the defendants, even though charged, begins the trial with no evidence against them. This presumption of innocence alone is sufficient to find the defendants not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged as to each defendant.

There is no burden upon the defendants to prove that they are innocent. Accordingly, the fact that any defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count. Each defendant is entitled to be treated separately, and you must return a separate verdict for each defendant.

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, 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 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 a particular defendant beyond a reasonable doubt, you must find that 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 any defendant who did testify in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 8

You have heard testimony that certain people made statements to F.B.I. Special Agent Daniel Orr. It is for you to decide:

First, whether the person in question made the statements, and

Second, if so, how much weight you should give to any alleged statement.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statements may have been made. This includes the fact that no statement was recorded and no statement was signed by the person from whom the statement was taken.

INSTRUCTION NO. 9

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. 10

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

1. On or about February 17, 2007, the defendant in question, without just cause or excuse, voluntarily and intentionally assaulted Corrie Brown Otter with a dangerous weapon.
2. Shod feet were used and are a dangerous weapon.
3. The defendant in question assaulted Corrie Brown Otter with intent to do bodily harm to Corrie Brown Otter.
4. The defendant in question was not acting in self defense as defined in Instruction No. 14.
5. The defendant is an Indian; and
6. The alleged offense took place in Indian country.

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

INSTRUCTION NO. 11

The phrase "dangerous weapon" as used in Instruction No. 10 means any object capable of being readily used by one person to inflict bodily injury upon another person.

INSTRUCTION NO. 12

If you should unanimously find a particular defendant "Not Guilty" of the crime of assault with a dangerous weapon as charged in Count I of the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count I of the indictment as to a particular defendant, then you must proceed to determine the guilt or innocence of that defendant as to the crime of simple assault under this instruction.

The crime of simple assault, a lesser included offense of the crime of assault with a dangerous weapon as charged in Count I of the indictment, has four essential elements, which are:

1. On or about February 17, 2007, the defendant in question, without just cause or excuse did voluntarily and intentionally assault Corrie Brown Otter.
2. The defendant in question was not acting in self defense as defined in Instruction No. 14.
3. The defendant is an Indian; and
4. The offense took place in Indian country.

For you to find the defendant in question guilty of this crime, a lesser included offense of the crime of assault with a dangerous weapon as charged in Count I of the indictment, the government must prove all of the essential elements of this lesser included offense beyond a reasonable doubt. Otherwise you must find the defendant in question not guilty of this crime.

INSTRUCTION NO. 13

The term "assault" as used in Instruction Nos. 10 and 12 means 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.

INSTRUCTION NO. 14

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.

INSTRUCTION NO. 15

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

1. On or about February 17, 2007, the defendant in question unlawfully entered or unlawfully remained in an occupied structure described as the residence of Lyle Crow Ghost;
2. The premises were not, at that time, open to the public nor was the defendant in question licensed or privileged to enter or remain;
3. The defendant in question unlawfully entered or unlawfully remained in the residence with the intent to commit the crime of assault.
4. The defendant in question committed the offense in the nighttime;
5. The defendant is an Indian; and
6. The alleged offense took place in Indian Country.

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

INSTRUCTION NO. 16

The crimes charged in the indictment include attempts to commit those crimes. A defendant may be found guilty of an attempt if he or she intended to engage in the conduct alleged in the counts of the indictment and he or she voluntarily and intentionally carried out some act which was a substantial step toward the commission of the alleged conduct in question.

INSTRUCTION NO. 17

Intent may be proved like anything else. You may consider any statements made and acts done by the defendants, and all the facts and circumstances in evidence which may aid in a determination of the intent of a particular defendant.

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

INSTRUCTION NO. 18

One of the issues in this case is whether any of the defendants were 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 the crimes charged in the indictment only if the effect of the alcohol makes it impossible for the defendant to have the specific intent to commit the offense of assault with a dangerous weapon or first degree burglary. Evidence that a particular defendant acted while under the influence of alcohol may be considered by you, together with all the other evidence, in determining whether or not the defendant in question did in fact have the specific intent to commit the crime or crimes in question.

INSTRUCTION NO. 19

A person may also be found guilty of the crimes charged in the indictment even if that person personally did not do every act constituting the crimes charged, if he or she aided and abetted the commission of the crimes. In order to have aided and abetted the commission of a crime a person must, before or at the time the crime was committed:

1. have known the crime was being committed or going to be committed;
2. have knowingly acted in some way for the purpose of causing or aiding the commission of the offense; and
3. have intended to commit the crime in question as explained in the instructions.

For you to find a particular defendant guilty of any of the crimes charged in the indictment by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the elements of the crime in question were committed by some person or persons and that the defendant in question 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.

You are also instructed that a person cannot aid and abet herself or himself in the commission of the crime. In other words, you may only find a particular defendant guilty of aiding and abetting a crime if you first find that some other person has performed acts necessary for the commission of one of the offenses charged.

INSTRUCTION NO. 20

You will note that the indictment charges that the offenses were committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offenses were committed on a date or dates reasonably near the date alleged.

INSTRUCTION NO. 21

The indictment in this case alleges that the defendants are Indians 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 case.

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

The defendants have not, by entering this agreement or stipulation, admitted their 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 defendants are Indians and that the place where the alleged offenses are claimed to have occurred is in Indian country.

INSTRUCTION NO. 22

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

A verdict form has been prepared for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdicts, you will have your foreperson fill in, date and sign the form to state the verdicts upon which you unanimously agree, and then return with your verdicts to the courtroom.

INSTRUCTION NO. 23

The verdicts must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdicts must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 24

If you have questions, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury.

You will note from the oath about to be taken by the marshal that the marshal and all other persons are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached unanimous verdicts.

INSTRUCTION NO. 25

It is proper to add a final caution.

Nothing that I have said in these instructions—and nothing that I have said or done during the trial—has been said or done to suggest to you what I think your verdicts should be.

What the verdicts shall be is your exclusive duty and responsibility.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

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CR 08-10009

-vs-

VERDICT

ANESSA WHITE EAGLE,
ANNA LISA WHITE EAGLE,
LORNA ARCHAMBAULT, and
MILES BO YELLOW EARRINGS,

Defendants.

Please return a verdict by placing an "X" in the space provided.

COUNT I

We, the jury in the above entitled action, as to the crime of assault with a dangerous weapon, find Anessa White Eagle:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Anessa White Eagle NOT GUILTY of assault with a dangerous weapon, or it, after all reasonable efforts, you are unable to reach a verdict as to that crime, then you must deliberate on the lesser included offense of simple assault, and complete the following:

We, the jury in the above entitled action, as to the crime of simple assault, a lesser included offense of assault with a dangerous weapon, find Anessa White Eagle:

_____ NOT GUILTY _____ GUILTY

We, the jury in the above entitled action, as to the crime of assault with a dangerous weapon, find Anna Lisa White Eagle:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Anna Lisa White Eagle NOT GUILTY of assault with a dangerous weapon, or it, after all reasonable efforts, you are unable to reach a verdict as to that crime, then you must deliberate on the lesser included offense of simple assault, and complete the following:

We, the jury in the above entitled action, as to the crime of simple assault, a lesser included offense of assault with a dangerous weapon, find Anna Lisa White Eagle:

_____ NOT GUILTY _____ GUILTY

We, the jury in the above entitled action, as to the crime of assault with a dangerous weapon, find Miles Bo Yellow Earrings:

:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Miles Bo Yellow Earrings NOT GUILTY of assault with a dangerous weapon, or it, after all reasonable efforts, you are unable to reach a verdict as to that crime, then you must deliberate on the lesser included offense of simple assault, and complete the following:

We, the jury in the above entitled action, as to the crime of simple assault, a lesser included offense of assault with a dangerous weapon, find Miles Bo Yellow Earrings:

_____ NOT GUILTY _____ GUILTY

COUNT II

We, the jury in the above entitled action, as to the crime of first degree burglary, find
Anessa White Eagle:

_____ NOT GUILTY _____ GUILTY

We, the jury in the above entitled action, as to the crime of first degree burglary, find
Anna Lisa White Eagle:

_____ NOT GUILTY _____ GUILTY

We, the jury in the above entitled action, as to the crime of first degree burglary, find
Lorna Archambault:

_____ NOT GUILTY _____ GUILTY

We, the jury in the above entitled action, as to the crime of first degree burglary, find
Miles Bo Yellow Earrings:

_____ NOT GUILTY _____ GUILTY

Dated this _____ day of _____, 2008.

Foreperson