

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

FILED
APR 09 2008
Clifton
CLERK

CENTRAL DIVISION

UNITED STATES OF AMERICA,

CR 08-30011

Plaintiff,

-vs-

JURY INSTRUCTIONS

HARVEY L. LANGDEAU,

Defendant.

Laurence Clifton
US District Judge.

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.

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. This is true even though some of those I gave you at the beginning or and during the trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, 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__

There is nothing particularly different in the way that you should consider the evidence in a trial from that in which any reasonable and careful person would treat any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case for only those purposes for which it has been received and to give such evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions of the Court. Remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence because the burden of proving guilt beyond a reasonable doubt is always assumed by the government.

INSTRUCTION NO. 4

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 any 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 will 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.

INSTRUCTION NO. 5

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct 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 him not guilty.

INSTRUCTION NO. 6

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

INSTRUCTION NO. __7__

If you took notes during the trial, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

INSTRUCTION NO. 8

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. 9

You received a typewritten transcript of a tape recording you heard. That transcript also undertook to identify the speakers engaged in the conversation.

You were permitted to have the transcript for the limited purpose of helping you follow the conversation as you listened to the tape recording, and also to help you keep track of the speakers. Differences in meaning between what you heard in the recording and read in the transcript may have been caused by such things as the inflection in a speaker's voice. It is what you heard, however, and not what you read, that is the evidence.

You are specifically instructed that whether the transcript correctly or incorrectly reflects the conversation or the identity of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcript, and upon your own examination of the transcript in relation to what you heard on the tape recording. If you decide that the transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

INSTRUCTION NO. 10

You have heard testimony that Harvey Langdeau made a statement to a FBI agent. It is for you to decide how much weight you should give to this statement.

In making this decision you should consider all of the evidence, including the circumstances under which the statement may have been made.

INSTRUCTION NO. __11__

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

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. 12

Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. 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. __13__

You must presume that the defendant, Harvey L. Langdeau, is innocent of the crimes charged. The Indictment is only a formal method of beginning a criminal case. It does not create any presumption of guilt; it is merely an accusation. The fact that a person has been indicted does not create any inference, nor is it evidence, that he is guilty of any crime. The presumption of innocence alone is sufficient to acquit a defendant unless you as jurors are satisfied beyond a reasonable doubt of the defendant's guilt of the crime charged from all the evidence that has been introduced in the case.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a 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. Unless the government proves, beyond a reasonable doubt, that the defendant committed each and every element of the offenses charged against him in the Indictment, you must find the defendant not guilty.

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

INSTRUCTION NO. __14__

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. _15__

The Indictment charges that the offenses alleged were committed “on or about” a certain date. Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged in the Indictment, it is not necessary for the government to prove that the offenses were committed precisely on the date charged.

INSTRUCTION NO. 16

Count I of the Indictment charges that on or about January 19, 2008, in Lyman County, in Indian Country, in the District of South Dakota, Harvey L. Langdeau, an Indian, did unlawfully assault Martin McCauley with a dangerous weapon, that is, a knife, with intent to do bodily harm to Martin McCauley, in violation of 18 U.S.C. §§ 1153 and 113(a)(3).

The defendant, Harvey L. Langdeau, has pleaded not guilty to this charge.

As I told you earlier, the indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The 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 crime charged. There is no burden upon a 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. 17

Section 113(a)(3) of Title 18 of the United States Code, provides:

Whoever, within the . . . territorial jurisdiction of the United States . . . (shall commit
an) assault with a dangerous weapon, with intent to do bodily harm, and without just
cause or excuse . . .

shall be guilty of an offense against the laws of the United States.

INSTRUCTION NO. __18__

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

- One. That the defendant, at the time and place alleged in the indictment, assaulted Martin McCauley.
- Two. That the defendant intended to do bodily harm.
- Three. That the defendant used a dangerous weapon to commit the assault.
- Four. That said act was committed without just cause or excuse.
- Five. That the defendant is an Indian.
- Six. That the offense took place in Indian country.

To sustain its burden of proof for 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 beyond a reasonable doubt, otherwise you must find the defendant not guilty of this crime under Count I.

INSTRUCTION NO. __19__

If your verdict under the charge alleged in Count I is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on that charge, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of simple assault. The crime of simple assault is a lesser included offense of the crime charged in Count I of the Indictment.

The essential elements of the lesser included offense of simple assault are as follows:

- One. That at the time and place alleged in the indictment, the defendant voluntarily and intentionally assaulted Martin McCauley.
- Two. That the assault was unlawful and without just cause or excuse.
- Three. That the defendant is an Indian.
- Four. That the offense took place in Indian country.

For you to find defendant guilty of the lesser included offense of simple assault, the Government must prove all of the essential elements of the offense beyond a reasonable doubt; otherwise you must find the defendant not guilty of the lesser included offense of simple assault.

INSTRUCTION NO. 20

Count II of the Indictment charges that on or about January 19, 2008, in Lyman County, in Indian Country, in the District of South Dakota, Harvey L. Langdeau, an Indian, did unlawfully assault Martin McCauley, and said assault resulted in serious bodily injury, in violation of 18 U.S.C. §§ 1153 and 113(a)(6).

The defendant, Harvey L. Langdeau, has pleaded not guilty to this charge.

INSTRUCTION NO. __21__

Section 113(a)(6) of Title 18 of the United States Code, provides:

Whoever, within the . . . territorial jurisdiction of the United States . . . (shall commit

an) assault resulting in serious bodily injury . . .

shall be guilty of an offense against the laws of the United States.

INSTRUCTION NO. 22

The crime of assault resulting in serious bodily injury as charged in Count II of the indictment, has five (5) essential elements, which are:

- One. That the defendant, at the time and place alleged in the indictment, assaulted Martin McCauley.
- Two. That the assault resulted in serious bodily injury to Martin McCauley.
- Three. That the assault was unlawful, without just cause or excuse.
- Four. That the defendant is an Indian.
- Five. That the offense took place in Indian country.

To sustain its burden of proof for the crime of assault resulting in serious bodily injury as charged in Count II of the indictment, the government must prove all of the essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of this crime under Count II.

INSTRUCTION NO. 23

If your verdict under the charge alleged in Count II of the Indictment is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on Count II, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of assault by striking, beating, or wounding. The crime of assault by striking, beating, or wounding is a lesser included offense of the crime charged in Count II of the Indictment.

The essential elements of the lesser included offense of assault by striking, beating, or wounding are as follows:

- One. That at the time and place alleged in the indictment, the defendant assaulted Martin McCauley by striking, beating, or wounding him.
- Two. That the assault was unlawful and without just cause or excuse.
- Three. That the defendant is an Indian.
- Four. That the offense took place in Indian country.

For you to find defendant guilty of assault by striking, beating, or wounding, a lesser included offense under Count II, 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. 24

Please consider each count separately for your deliberations.

On Count I, you should first determine whether the defendant is “guilty” or “not guilty” of the assault with a dangerous weapon as charged. If you find the defendant “guilty” go on to Count II. If you find the defendant “not guilty” of assault with a dangerous weapon, or if, after all reasonable efforts, you are unable to reach a verdict on that charge, you should determine whether the defendant is “guilty” or “not guilty” of the lesser offense of simple assault.

On Count II, you should first determine whether the defendant is “guilty” or “not guilty” of assault resulting in serious bodily injury. If you find the defendant “guilty” you need not determine whether he is guilty of the lesser included offense. If you find the defendant “not guilty” of assault resulting in serious bodily injury, or if, after all reasonable efforts, you are unable to reach a verdict on that charge, you should determine whether the defendant is “guilty” or “not guilty” of the lesser offense of assault by striking, beating or wounding.

INSTRUCTION NO. 25

As used in both counts of the Indictment, an “assault” is any intentional and voluntary attempt or threat to do injury to the person of a 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.

A “dangerous weapon” is an object used in a manner likely to endanger life or inflict serious bodily harm.

“Serious bodily injury” means bodily injury which involves:

- a. a substantial risk of death;
- b. extreme physical pain;
- c. protracted and obvious disfigurement; or
- d. protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

INSTRUCTION NO. 26

It is the defendant's position that he acted in self-defense. If a person reasonably believes that force is necessary to protect himself 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.

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 from what he reasonably believes to be a substantial risk of death or great bodily harm.

In order to convict the defendant of any of the counts against him, you must find beyond a reasonable doubt that the defendant was not acting in self-defense during the incident on January 19, 2008.

INSTRUCTION NO. 27

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 a determination of 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.

INSTRUCTION NO. __28__

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that the place where the alleged incident occurred is in Indian country. You must therefore treat those facts as having been proved.

The defendant has not, by entering into 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 present to the jury the facts that the defendant is an Indian and that if the jury finds that the alleged incident occurred, it occurred in Indian country.

INSTRUCTION NO. 29

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I will 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 your 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, you may send a note to me through the marshal, 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 vote stands numerically.

INSTRUCTION NO. __29__, continued

Fifth, your verdicts 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 verdicts 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 upon the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA,	*	CR 08-30011
	*	
Plaintiff,	*	
	*	
-vs-	*	VERDICT FORM
	*	
	*	
HARVEY L. LANGDEAU,	*	
	*	
Defendant.	*	
	*	

Please return your verdicts by placing an "X" or "√" in the spaces provided.

VERDICT ONE

We, the jury in the above entitled and numbered case, as to the crime of assault with a dangerous weapon with intent to do bodily harm, as charged in Count I of the Indictment, find the defendant:

_____ NOT GUILTY

_____ GUILTY

If you find the defendant "guilty" in Verdict One, do not consider Verdict Two.

Only if you find the defendant "not guilty" in Verdict One must you complete Verdict Two.

VERDICT TWO

We, the jury in the above entitled and numbered case, as to the crime of simple assault, a lesser included offense of the crime charged in Count 1 the Indictment, find the defendant:

_____ NOT GUILTY

_____ GUILTY

VERDICT THREE

We, the jury in the above entitled and numbered case, as to the crime of assault resulting in serious bodily injury as charged in Count II of the Indictment, find the defendant:

_____ NOT GUILTY

_____ GUILTY

If you find the defendant “guilty” in Verdict Three, do not consider Verdict Four.

Only if you find the defendant “not guilty” in Verdict Three must you complete Verdict Four.

VERDICT FOUR

We, the jury in the above entitled and numbered case, as to the crime of assault by striking, beating or wounding, a lesser included offense of the crime charged in Count II of the Indictment, find the defendant:

_____ NOT GUILTY

_____ GUILTY

Dated this _____ day of April, 2008.

Foreperson