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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLAYTON HIGH WOLF, SR.,

Defendant.

No. CR 08-50055-01

**REDACTED
FINAL
INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

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 WITH A
DANGEROUS WEAPON

Count 1 of the indictment charges that, on or about September 15, 2007, at Pine Ridge, in Indian country, in the District of South Dakota, the defendant, Clayton High Wolf, Sr., did assault D.E.B. with a dangerous weapon, namely, a handgun, with intent to do bodily harm.

Elements

For you to find Mr. High Wolf, Sr. guilty of the “assault with a dangerous weapon” offense charged in **Count 1** of the indictment, the government must prove the following six essential elements beyond a reasonable doubt as to the defendant:

One, that on or about September 15, 2007, Mr. High Wolf, Sr. assaulted D.E.B.;

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.

Two, that Mr. High Wolf, Sr. used a dangerous weapon, namely a handgun, to commit the assault;

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

Three, that Mr. High Wolf, Sr. intended to do bodily harm;

“Intent to do bodily harm” means knowingly and intentionally doing an act for the purpose of causing someone to suffer bodily injury. This intent may be

determined from all the facts and circumstances surrounding the case.

Four, that Mr. High Wolf, Sr. was not acting in self defense; and

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 another person.

Although a defendant asserting self defense is not required to have retreated before resorting to force, the availability of retreat may be a factor for the jury to consider in evaluating whether unreasonable force was used. An aggressor need not have been armed in order for a defendant to raise a self defense or defense of third person issue. Whether an aggressor is armed may be relevant in determining the degree of force a defendant is entitled to use.

Five and six, that Mr. High Wolf, Sr. is an Indian and that the offense took place in Indian country.

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that Pine Ridge is in Indian country.

The defendant has not, by entering into this agreement or stipulation, admitted his guilt of the offense 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 Pine Ridge is in Indian country.

For you to find Mr. High Wolf, Sr. guilty of assault with a dangerous weapon, the government must prove all of these essential elements beyond a

reasonable doubt. Otherwise, you must find Mr. High Wolf, Sr. not guilty of this offense.

Lesser Included Offense - Simple Assault

If your verdict under this instruction is not guilty of assault with a dangerous weapon, or if after all reasonable efforts you are unable to reach a verdict on Count 1 of the indictment, 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, a lesser included offense of the crime charged in Count 1 of the indictment, has the following four essential elements:

One, that on or about September 15, 2007, Mr. High Wolf, Sr. assaulted D.E.B.;

“Assault” was previously defined for you in this instruction.

Two, that Mr. High Wolf, Sr. was not acting in self defense; and

“Self defense” was previously defined for you in this instruction.

Three and Four, that Mr. High Wolf, Sr. is an Indian and that the offense took place in Indian country.

The parties stipulated that the defendant is an Indian and that the place where the alleged incident occurred is in Indian country. The effect of this stipulation has previously been explained in this instruction.

For you to find Mr. High Wolf, Sr. guilty of the crime of simple assault, the government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find Mr. High Wolf, Sr. not guilty of this crime.

FINAL INSTRUCTION NO. 3 – COUNT 2 - USE OF A FIREARM DURING
A CRIME OF VIOLENCE

Count 2 of the indictment charges that, on or about September 15, 2007, at Pine Ridge, in Indian country, in the District of South Dakota, the defendant, Clayton High Wolf, Sr., during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit, a violation of 18 U.S.C. §§ 113(a)(3) and 1153, as charged in Count I of this Indictment, knowingly used, carried, and brandished a firearm, to wit, a handgun.

Elements

For you to find Mr. High Wolf, Sr. guilty of the “use of a firearm during a crime of violence” offense charged in **Count 2** of the indictment, the government must prove the following two essential elements beyond a reasonable doubt as to the defendant:

One, that Mr. High Wolf, Sr. committed a crime of violence, namely assault with a dangerous weapon as charged in Count I of the indictment; and

Two, that Mr. High Wolf, Sr. knowingly used or carried a firearm during and in relation to the commission of that crime.

The phrase “used a firearm” means that the firearm was actively employed in the course of the commission of the assault with a dangerous weapon. You may find that a firearm was used during the commission of the crime of assault with a dangerous

weapon if you find it was brandished, displayed, used to strike someone, the defendant attempted to fire the firearm or fired it, or made references to a firearm that was in the defendant's possession.

You may find that a firearm was "carried" during the commission of the crime of assault with a dangerous weapon if you find that the defendant had a firearm on his person.

For you to find Mr. High Wolf, Sr. guilty of use of a firearm during a crime of violence, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find Mr. High Wolf, Sr. not guilty of this offense.

FINAL INSTRUCTION NO. 4 - PROOF OF INTENT OR KNOWLEDGE

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

FINAL INSTRUCTION NO. 5 - IMPEACHMENT

In Preliminary Instruction No. 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.

You have heard evidence that witnesses Rulon Waters, Tim “T Buck” Buckman, and Clayton High Wolf, Jr. have each been convicted of a crime or crimes. You may use that evidence only to help you decide whether or not to believe these witnesses and how much weight to give to their testimony.

You have also heard evidence that the defendant was previously convicted of distribution of marijuana. You may *not* use this evidence to decide whether the defendant carried out the acts involved in the crimes charged in

the indictment in this case. Again, you may use this evidence only to help you decide whether or not to believe the defendant and how much weight to give to his testimony.

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. 6 - PRESUMPTION OF INNOCENCE
AND BURDEN OF PROOF

Clayton High Wolf, Sr. 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. High Wolf, Sr. throughout the trial. That presumption alone is sufficient to find him not guilty. The presumption of innocence may be overcome as to Mr. High Wolf, Sr. only if the prosecution proves, beyond a reasonable doubt, each element of a crime charged against him.

The burden is always upon the prosecution 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 prosecution.

Unless the prosecution proves beyond a reasonable doubt that Mr. High Wolf, Sr. has committed each and every element of an offense charged in the indictment against him, you must find him not guilty of that offense.

FINAL INSTRUCTION NO. 7 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence or lack of evidence produced by the prosecution. 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. 8 - 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 an offense charged against him, then the defendant should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on an offense

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

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

FINAL INSTRUCTION NO. 9 - 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 punishment of Clayton High Wolf, Sr. in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

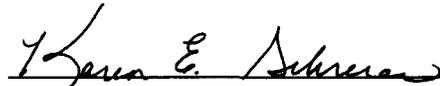
Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. **Remember that you should not tell anyone—including 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 November 25, 2008.



Karen E. Schreier
Chief Judge