UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,	*	CR. 12-30051-RAL
Plaintiff,	*	
-vs-	*	FINAL INSTRUCTIONS TO JURY
LEON DONALD FARLEE,	*	
Defendant.	*	

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. The instructions I am about to give you now are in writing and will be available to you in the jury room.

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.

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

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 -- this 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 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.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction

INSTRUCTION NO. 4

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.

INSTRUCTION NO. 5

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. 6

The indictment in this case charges that the defendant committed the crimes of assault with a dangerous weapon and assault resulting in serious bodily injury. The defendant has pleaded not guilty to all 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. 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 element of the crimes charged.

INSTRUCTION NO. 7

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

***One*, that on or about the 31st day of March, 2012, Leon Donald Farlee, without just cause or excuse, voluntarily and intentionally assaulted Merton Eaton with a dangerous weapon;**

***Two*, that shod feet were used and that is a dangerous weapon;**

***Three*, that Mr. Farlee had the specific intent to do bodily harm to Merton Eaton;**

***Four*, that Mr. Farlee is an Indian; and**

***Five*, that the offense took place in Indian country.**

If all of these elements have been proved beyond a reasonable doubt as to Mr. Farlee, and if it has further been proved beyond a reasonable doubt that the defendant was not acting in self defense or defense of another as defined in Instruction No. 13, then you must find the defendant guilty of the crime charged; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 8

If you should unanimously find the defendant "Not Guilty," of the crime of assault with a dangerous weapon as charged in Count I of the indictment, or if, after reasonable efforts, you are unable to reach a verdict as to the crime charged in Count I of the indictment, then you must proceed to determine the guilt or innocence of the 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 weapons as charged in Count I of the indictment, has three essential elements, which are:

***One*, that on or about the 31st day of March, 2012, Leon Donald Farlee, without just cause or excuse, voluntarily and intentionally engaged in a simple assault of Merton Eaton;**

A "simple assault" is any intentional or knowing harmful or offensive bodily touching or contact, however slight, without justification or excuse, with another's person, regardless of whether physical harm is intended or inflicted. It is not necessary that the person have a reasonable apprehension of bodily harm.

***Two*, that Mr. Farlee, is an Indian; and**

***Three*, that the offense took place in Indian country.**

If all of these elements have been proved beyond a reasonable doubt as to Mr. Farlee, and if it has further been proved beyond a reasonable doubt that the defendant was not acting in self defense or defense of another as defined in Instruction No. 13, then you must find the defendant guilty of the crime of simple assault; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 9

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

***One*, that on or about the 31st day of March, 2012, Leon Donald Farlee, without just cause or excuse, voluntarily and intentionally assaulted Merton Eaton;**

***Two*, that the assault resulted in serious bodily injury;**

***Three*, that Mr. Farlee is an Indian; and**

***Four*, that the offense took place in Indian country.**

If all of these elements have been proved beyond a reasonable doubt as to Mr. Farlee, and if it has further been proved beyond a reasonable doubt that the defendant was not acting in self defense or defense of another as defined in Instruction No. 13, then you must find the defendant guilty of the crime charged; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 10

Omitted by the Court.

INSTRUCTION NO. 11

The phrase "dangerous weapon" as used in Instruction No. 7 means any object capable of being readily used by one person to inflict bodily injury upon another person. A "dangerous weapon" may include shod feet.

INSTRUCTION NO. 12

"Serious bodily injury" as used in Instruction No. 9 means bodily injury which involves:

1. A substantial risk of death; or

2. Extreme physical pain; or

3. Protracted and obvious disfigurement; or

4. Protracted loss of impairment of the function of a bodily member, organ, or mental faculty.

INSTRUCTION NO. 13

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.

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

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

In the crime of assault with a dangerous weapon as charged in Count I of the indictment, or the lesser included offense of simple assault, there must exist in the mind of the perpetrator the specific intent to do bodily harm to the alleged victim. There is no such requirement for the crime of assault resulting in serious bodily injury as charged in Count II of the indictment.

If the defendant acted without such specific intent, the crime of assault with a dangerous weapon, or the lesser included crime of simple assault, have not been 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 the defendant to have the specific intent to commit the offense of assault with a dangerous weapon or the specific intent to commit the offense of simple assault. 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 he did in fact have specific intent to commit such crime.

INSTRUCTION NO. 16

Intent 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 the determination of the defendant's 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. 17

The indictment in this case alleges that the defendant is an Indian 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 crimes charged in the indictment.

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

The defendant has not, by entering 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 establish the facts that the defendant is an Indian and that the places where the alleged offenses are claimed to have occurred is in Indian country.

INSTRUCTION NO. 18

You have heard testimony about the character and reputation of Merton Eaton and of Leslie Oakie for truthfulness. You may consider this evidence only in deciding whether to believe the testimony of Merton Eaton and the testimony of Leslie Oakie and how much weight to give to each testimony.

INSTRUCTION NO. 19

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall 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 a 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 during your deliberations, you may send a note to me through the marshal or bailiff, 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.

Fifth, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Sixth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not 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 bailiff that you are ready to return to the courtroom.