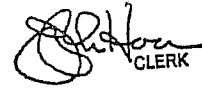


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED

MAY 12 2016


CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DENNY JOHNSON,

Defendant.

CR 14-10027-CBK

JURY INSTRUCTIONS

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 defendant in his 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 the defendant with the crimes of aggravated sexual abuse, kidnapping, assault with a dangerous weapon, assault of a spouse by strangulation, and domestic assault by an habitual offender. The defendant has 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 defendant is presumed to be innocent. Therefore, the defendant, even though charged, begins the trial with no evidence against him. This 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 crimes charged.

A separate crime or offense is charged against the defendant in each count of the indictment. Each offense, and the evidence pertaining to it, should be considered separately. The fact that you may find the defendant guilty or not guilty of any of the offenses charged should not control your verdict as to any other offense charged in the indictment.

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

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, and the documents and other things received as exhibits.

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 those 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 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 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 the 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.

INSTRUCTION NO. 8

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. 9

You have heard evidence that the defendant has at least twice previously been convicted of crimes involving domestic violence against Darilyn LeClaire. It is the burden of the government to prove these two convictions as part of the allegations that the defendant is a habitual domestic violence offender. You may not, however, find the defendant guilty in this case solely because of the past convictions. You may not convict a person simply because you believe he may have committed similar acts in the past.

INSTRUCTION NO. 10

You have heard testimony about the character and reputation of Darilyn LeClaire for untruthfulness. You may consider this evidence only in deciding whether to believe the testimony of such witness and how much weight to give it.

INSTRUCTION NO. 11

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. 12

The crime of aggravated sexual abuse, as charged in Count I of the indictment, has four essential elements, which are:

1. On or about between December 1, 2013, and December 28, 2013, the defendant voluntarily and intentionally caused Darilyn LeClaire to engage in a sexual act, that is penetration, however slight, of Darilyn LeClaire's vulva, by his penis.
2. At the time of the alleged offense, the defendant voluntarily and intentionally caused Darilyn LeClaire to engage in a sexual act by force.
3. The defendant is an Indian; and
4. The alleged offense occurred in Indian Country.

For you to find the defendant 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 not guilty of this crime.

INSTRUCTION NO. 13

The crime of aggravated sexual abuse, as charged in Count II of the indictment, has four essential elements, which are:

1. On or about between December 1, 2013, and December 28, 2013, the defendant voluntarily and intentionally caused Darilyn LeClaire to engage in a sexual act, that is penetration, however slight, of Darilyn LeClaire's anus, by his penis.
2. At the time of the alleged offense, the defendant voluntarily and intentionally caused Darilyn LeClaire to engage in a sexual act by force.
3. The defendant is an Indian; and
4. The alleged offense occurred in Indian Country.

For you to find the 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 the defendant not guilty of this crime.

INSTRUCTION NO. 14

The crime of aggravated sexual abuse, as charged in Count III of the indictment, has four essential elements, which are:

1. On or about between December 15, 2013, and December 28, 2013, the defendant voluntarily and intentionally caused Darilyn LeClaire to engage in a sexual act, that is penetration, however slight, of Darilyn LeClaire's vulva, by his penis.
2. At the time of the alleged offense, the defendant voluntarily and intentionally caused Darilyn LeClaire to engage in a sexual act by placing her in fear that she would be subjected to death, serious bodily injury, or kidnapping.
3. The defendant is an Indian; and
4. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime as charged in Count III 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 crime.

INSTRTUCTION NO. 15

The crime of what is commonly called kidnapping, as charged in Count IV of the indictment, has four essential elements, which are:

1. On or about between December 29, 2013, and January 10, 2014, the defendant unlawfully seized, confined, kidnapped, abducted, or carried away Darilyn LeClaire.
2. Defendant unlawfully seized, confined, kidnapped, abducted, or carried away Darilyn LeClaire for some purpose of his own or for some reason that the defendant considered of sufficient benefit to him.
3. The defendant is an Indian; and
4. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime charged in Count IV 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 crime.

INSTRUCTION NO. 16

The crime of aggravated sexual abuse, as charged in Count V of the indictment, has four essential elements, which are:

1. On or about between December 29, 2013, and January 10, 2014, the defendant voluntarily and intentionally caused Darilyn LeClaire to engage in a sexual act, that is penetration, however slight, of Darilyn LeClaire's vulva, by his penis.
2. At the time of the alleged offense, the defendant voluntarily and intentionally caused Darilyn LeClaire to engage in a sexual act by force.
3. The defendant is an Indian; and
4. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime as charged in Count V 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 crime.

INSTRUCTION NO. 17

The crime of aggravated sexual abuse, as charged in Count VI of the indictment, has four essential elements, which are:

1. On or about between December 29, 2013, and January 10, 2014, the defendant voluntarily and intentionally caused Darilyn LeClaire to engage in a sexual act, that is contact with Darilyn LeClaire's mouth, by his penis.
2. At the time of the alleged offense, the defendant voluntarily and intentionally caused Darilyn LeClaire to engage in a sexual act by placing her in fear that she would be subjected to death, serious bodily injury, or kidnapping.
3. The defendant is an Indian; and
4. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime as charged in Count VI 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 crime.

INSTRUCTION NO. 18

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

1. On or about between December 29, 2013, and January 10, 2014, the defendant, without just cause or excuse, voluntarily and intentionally assaulted Darilyn LeClaire.
2. Shod feet or a knife were used as and are dangerous weapons as defined in Instruction No. 24.
3. The defendant assaulted Darilyn LeClaire with intent to do bodily harm to Darilyn LeClaire.
4. The defendant is an Indian; and
5. The alleged offense took place in Indian Country.

For you to find the defendant guilty of this crime charged in Count VII 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 crime.

INSTRUCTION NO. 19

If you should unanimously find the defendant “Not Guilty,” of the crime of assault with a dangerous weapon as charged in Count VII of the indictment, or if after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count VII 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 weapon as charged in Count VII of the indictment, has three essential elements, which are:

1. On or about between December 29, 2013, and January 10, 2014, the defendant, without just cause or excuse, voluntarily and intentionally assaulted Darilyn LeClaire.
2. The defendant is an Indian; and
3. The alleged offense took place in Indian country.

For you to find the defendant guilty of this crime, a lesser included offense of the crime of assault with a dangerous weapon as charged in Count VII 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 not guilty of this crime.

INSTRUCTION NO. 20

The crime of assault by strangulation or suffocation as charged in Count VIII of the indictment has five essential elements, which are:

1. On or about between December 1, 2013 and January 10, 2014, the defendant, without just cause or excuse, voluntarily and intentionally assaulted Darilyn LeClaire.
2. Defendant assaulted Darilyn LeClaire by strangling or suffocating her or attempting to do so.
3. At the time of the assault, Darilyn LeClaire was defendant's spouse, intimate partner, or dating partner.
4. The defendant is an Indian; and
5. The alleged offense took place in Indian Country.

For you to find the defendant guilty of this crime charged in Count VIII 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 crime.

INSTRUCTION NO. 21

If you should unanimously find the defendant “Not Guilty,” of the crime of assault by strangulation as charged in Count VIII of the indictment, or if after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count VIII 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 by strangulation as charged in Count VIII of the indictment, has three essential elements, which are:

1. On or about between December 1, 2013, and January 10, 2014, the defendant, without just cause or excuse, voluntarily and intentionally assaulted Darilyn LeClaire.
2. The defendant is an Indian; and
3. The alleged offense took place in Indian country.

For you to find the defendant guilty of this crime, a lesser included offense of the crime of assault with a dangerous weapon as charged in Count VIII 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 not guilty of this crime.

INSTRUCTION NO. 22

The crime of domestic assault by an habitual offender, as charged in Count IX of the indictment, has three essential elements, which are:

1. Defendant, on at least two separate prior occasions, was convicted in an Indian tribal court for domestic assaults against Darilyn LeClaire who was then an intimate partner (as defined in instruction No. 27) of the defendant.
2. Thereafter, on or about between December 1, 2013, and January 10, 2014, defendant voluntarily and intentionally without just cause or excuse committed a domestic assault (as defined in Instruction No. 26) against Darilyn LeClaire; and
3. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime as charged in Count IX 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 crime.

INSTRUCTION NO. 23

If you should unanimously find the defendant “Not Guilty,” of the crime of domestic assault by an habitual offender as charged in Count IX of the indictment, or if after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count IX 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 domestic assault by an habitual offender as charged in Count IX of the indictment, has three essential elements, which are:

1. On or about between December 1, 2013, and January 10, 2014, the defendant, without just cause or excuse, voluntarily and intentionally assaulted Darilyn LeClaire.
2. The defendant is an Indian; and
3. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime, a lesser included offense of the crime of domestic assault by an habitual offender as charged in Count IX 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 not guilty of this crime.

INSTRUCTION NO. 24

The phrase “dangerous weapon” as used in these instructions means any object capable of being readily used by one person to inflict bodily injury upon another person.

INSTRUCTION NO. 25

The term “assault” as used in Instructions 18, 19, 20, 21, 22, and 23 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. 26

The phrase “domestic assault” as used in these instructions means an assault committed by a current or former spouse, parent, child, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, child, or guardian, or by a person similarly situated to a spouse, parent, child, or guardian of the victim.

INSTRUCTION NO. 27

The phrase “intimate partner” as used in these instructions means a person who cohabitates in a social relationship of a romantic or intimate nature, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

INSTRUCTION NO. 28

Intent may be proved like anything else. You may consider any statements and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a 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. 29

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 notify the marshal that you have a verdict.

INSTRUCTION NO. 30

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 the 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. 31

The indictment in this case alleges that, as to certain counts, the defendant is an Indian and that the alleged offenses occurred in Indian country.

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

INSTRUCTION NO. 32

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 he, as well as 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. 33

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, vs. DENNY JOHNSON, Defendant.	CR 14-10027-CBK VERDICT
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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 aggravated sexual abuse, as charged in Count I of the indictment, find Denny Johnson:

_____ NOT GUILTY _____ GUILTY

COUNT II

We, the jury in the above entitled action, as to the crime of aggravated sexual abuse, as charged in Count II of the indictment, find Denny Johnson:

_____ NOT GUILTY _____ GUILTY

COUNT III

We, the jury in the above entitled action, as to the crime of aggravated sexual abuse, as charged in Count III of the indictment, find Denny Johnson:

_____ NOT GUILTY _____ GUILTY

COUNT IV

We, the jury in the above entitled action, as to the crime of kidnapping, as charged in Count IV of the indictment, find Denny Johnson:

_____ NOT GUILTY _____ GUILTY

COUNT V

We, the jury in the above entitled action, as to the crime of aggravated sexual abuse, as charged in Count V of the indictment, find Denny Johnson:

_____ NOT GUILTY _____ GUILTY

COUNT VI

We, the jury in the above entitled action, as to the crime of aggravated sexual abuse, as charged in Count VI of the indictment, find Denny Johnson:

_____ NOT GUILTY _____ GUILTY

COUNT VII

We, the jury in the above entitled action, as to the crime of assault with a dangerous weapon, as charged in Count VII of the indictment, find Denny Johnson:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Denny Johnson NOT GUILTY of the crime charged in Count VII of the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count VII of the indictment, 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 the crime charged in Count VII of the indictment, find Denny Johnson:

_____ NOT GUILTY _____ GUILTY

COUNT VIII

We, the jury in the above entitled action, as to the crime of assault by strangulation, as charged in Count VIII of the indictment, find Denny Johnson:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Denny Johnson NOT GUILTY of the crime charged in Count VIII of the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count VIII of the indictment, 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 the crime charged in Count VIII of the indictment, find Denny Johnson:

_____ NOT GUILTY _____ GUILTY

COUNT IX

We, the jury in the above entitled action, as to the crime of domestic abuse by an habitual offender, as charged in Count IX of the indictment, find Denny Johnson:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Denny Johnson NOT GUILTY of the crime charged in Count IX of the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count IX of the indictment, 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 the crime charged in Count IX of the indictment, find Denny Johnson:

_____ NOT GUILTY _____ GUILTY

Dated this _____ day of May, 2016.

Foreperson