

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

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<p>UNITED STATES OF AMERICA,  Plaintiff,  vs.  MICHAEL LEE LONG, JR.,  Defendant.</p>	<p>3:15-CR-30118-RAL  FINAL JURY INSTRUCTIONS</p>
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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—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 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.

When you were instructed that evidence was received for a limited purpose, 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 of any witness 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 persons described as experts. A person who, by knowledge, skill, training, education, or experience, has become expert in some field may state his or her opinion on matters in that field and may also state the reasons for his or her 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' 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 remaining charges from the superseding indictment in this case are two counts of Assault with a Dangerous Weapon, one count of Prohibited Person in Possession of a Firearm, and one count of Using a Firearm During and in Relation to a Crime of Violence. The defendant has pleaded not guilty to those charges.

The superseding indictment is simply the document that formally charges the defendant with the crimes for which he is on trial. The superseding indictment is not evidence of anything. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate, with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty. This presumption can be overcome only if the government proved during the trial, beyond a reasonable doubt, each element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial. 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 verdict.

INSTRUCTION NO. 7

The crime of Assault with a Dangerous Weapon, as charged in Count I of the superseding indictment, has six elements, which are:

***One*, that on or about the 17th day of May, 2015, the defendant, Michael Lee Long, Jr., voluntarily and intentionally assaulted Cynthia Jones-Bear Robe with a dangerous weapon;**

***Two*, that a pistol, that is a Glock Model 27, .40 caliber pistol, bearing serial number VHG125, was used and that it is a dangerous weapon;**

***Three*, that Michael Lee Long, Jr. had the specific intent to do bodily harm to Cynthia Jones-Bear Robe;**

***Four*, that Michael Lee Long, Jr. was not acting in self-defense as defined in Instruction No. 14;**

***Five*, that Michael Lee Long, Jr. is an Indian; and**

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

If all of these elements have been proved beyond a reasonable doubt as to Michael Lee Long, Jr., then you must find him guilty of the crime charged; otherwise you must find him 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 superseding indictment, or if after all reasonable efforts, you are unable to reach a verdict as to Count I, then you should record that verdict on the verdict form and go on to consider whether the defendant is guilty of the lesser-included 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 superseding indictment, has four essential elements, which are:

***One, that on or about the 17th day of May, 2015, the defendant, Michael Lee Long, Jr., voluntarily and intentionally engaged in a simple assault of Cynthia Jones-Bear Robe;***

***Two, that Michael Lee Long, Jr. was not acting in self-defense as defined in Instruction No. 14;***

***Three, that Michael Lee Long, Jr. 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 Michael Lee Long, Jr., then you must find him guilty of the lesser-included offense; otherwise you must find him not guilty of this crime.

INSTRUCTION NO. 9

The crime of Assault with a Dangerous Weapon, as charged in Count II of the superseding indictment, has six elements, which are:

***One*, that on or about the 17th day of May, 2015, the defendant, Michael Lee Long, Jr., voluntarily and intentionally assaulted K.J. with a dangerous weapon;**

***Two*, that a pistol, that is a Glock Model 27, .40 caliber pistol, bearing serial number VHG125, was used and that it is a dangerous weapon;**

***Three*, that Michael Lee Long, Jr. had the specific intent to do bodily harm to K.J.;**

***Four*, that Michael Lee Long, Jr. was not acting in self-defense as defined in Instruction No. 14;**

***Five*, that Michael Lee Long, Jr. is an Indian; and**

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

If all of these elements have been proved beyond a reasonable doubt as to Michael Lee Long, Jr., then you must find him guilty of the crime charged; otherwise you must find him not guilty of this crime.

INSTRUCTION NO. 10

If you should unanimously find the defendant “Not Guilty” of the crime of Assault with a Dangerous Weapon, as charged in Count II of the superseding indictment, or if after all reasonable efforts, you are unable to reach a verdict as to Count II, then you should record that verdict on the verdict form and go on to consider whether the defendant is guilty of the lesser-included 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 II of the superseding indictment, has four essential elements, which are:

***One, that on or about the 17th day of May, 2015, the defendant, Michael Lee Long, Jr., voluntarily and intentionally engaged in a simple assault of K.J.;***

***Two, that Michael Lee Long, Jr. was not acting in self-defense as defined in Instruction No. 14;***

***Three, that Michael Lee Long, Jr. 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 Michael Lee Long, Jr., then you must find him guilty of the lesser-included offense; otherwise you must find him not guilty of this crime.

INSTRUCTION NO. 11

An “assault” under Federal law is (1) any intentional and voluntary attempt or threat to do injury to another person, 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 or (2) 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 or whether the victim has a reasonable apprehension of bodily harm.

In the crime of Assault with a Dangerous Weapon, as charged in Counts I and II of the superseding indictment, there must exist in the mind of the defendant the specific intent to do bodily harm to the alleged victim. There is no such requirement for the crime of Simple Assault, which is a lesser-included offense of Assault with a Dangerous Weapon.

If the defendant acted without such specific intent, the crimes of Assault with a Dangerous Weapon have not been committed.

INSTRUCTION NO. 12

The term “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. 13

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. 14

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.

INSTRUCTION NO. 15

It is a crime for a person who has been convicted of Domestic Abuse to possess a firearm, as charged in Count IV of the superseding indictment. This crime has four elements, which are:

***One, on or about June 17, 2011, Michael Lee Long, Jr. was convicted in Rosebud Sioux Tribal Court of a misdemeanor crime of violence;***

***Two, the victim of the Domestic Abuse was in a domestic relationship with Michael Lee Long, Jr.;***

***Three, after that conviction, Michael Lee Long, Jr. knowingly possessed a firearm, that is a Glock Model 27, .40 caliber pistol, bearing serial number VHG125; and***

***Four, the firearm was transported across a state line at some time during or before Michael Lee Long, Jr.'s possession of it.***

You are instructed that Domestic Abuse in Rosebud Sioux Tribal Court is a misdemeanor crime of violence.

You must determine whether the prior misdemeanor crime of violence is a “domestic” offense. It is a “domestic” offense if you find the defendant, at the time of the events underlying the misdemeanor offense, was a current or former spouse of the victim or currently or formerly cohabited with the victim as a person similarly situated to a spouse of the victim.

You must determine whether the defendant is the same person who was convicted of this misdemeanor crime.

If you have found beyond a reasonable doubt that the firearm in question was manufactured in a state other than South Dakota and that the defendant possessed that firearm in the State of South Dakota, then you may, but are not required to, find that it was transported across a state line.

The term “firearm” means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

If all of these elements have been proved beyond a reasonable doubt as to Michael Lee Long, Jr., then you must find him guilty of the crime charged; otherwise you must find him not guilty of this crime.



INSTRUCTION NO. 16

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his actions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 17

The crime of carrying, brandishing, or discharging a firearm during and in relation to a crime of violence, as charged in the superseding indictment, has three essential elements, which are:

***One, that Michael Lee Long, Jr. committed the crime of assault with a dangerous weapon as charged in Count I or II of the superseding indictment;***

***Two, that Michael Lee Long, Jr. knowingly carried, brandished, or discharged a firearm in furtherance of that crime; and***

***Three, that the firearm was a Glock Model 27, .40 caliber pistol, bearing serial number VHG125.***

To use a firearm “in the furtherance of that crime” means that the firearm was actively employed in the course of the commission of the crime of 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 that it was discharged, brandished, or fired. The term “brandish” means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

You must first consider the evidence pertaining to Counts I or II of the superseding indictment and determine whether the government has proved any one of those counts beyond a reasonable doubt. If you reach a verdict of guilty on assault with a dangerous weapon as charged in Count I or II (or both), only then may you consider this charge. If your verdict was not guilty on Count I and II, you must return a verdict of not guilty on this charge. If you find with respect to Count I or II, that the defendant did not commit the crime of assault with a dangerous weapon, but do find the defendant committed the crime of simple assault, then you should find the defendant not guilty of this charge.

If all of these elements have been proved beyond a reasonable doubt as to Michael Lee Long, Jr., then you must find him guilty of the crime charged; otherwise you must find him not guilty of this crime.

INSTRUCTION NO. 18

A witness may be discredited or “impeached” by contradictory evidence, by a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something or has failed to say or do something which is inconsistent with the witness’s present testimony.

If you believe that any witness has been so impeached, then it is your exclusive decision to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

INSTRUCTION NO. 19

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. 20

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word “possession” has been used in these instructions it includes actual as well as constructive possession and also sole as well as joint possession.

INSTRUCTION NO. 21

You will note that the superseding indictment charges that the offense was committed “on or about” a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the case establishes beyond a reasonable doubt that the offense was committed on a date or dates reasonably near the dates alleged.

INSTRUCTION NO. 22

Counts I and II of the superseding indictment in this case allege that the defendant Michael Lee Long, Jr. is an Indian and that Count I and II occurred in Indian country. The existence of those two factors is necessary in order for this Court to have jurisdiction over Counts I and II as charged in the superseding indictment and over any lesser included offenses to Counts I and II.

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 Counts I and II 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 place where Counts I and II are claimed to have occurred is in Indian country.

INSTRUCTION NO. 23

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, Snapchat, LinkedIn, Instagram, YouTube, My Space 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. 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.



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CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,  Plaintiff,  vs.  MICHAEL LEE LONG, JR.,  Defendant.</p>	<p>3:15-CR-30118-RAL  VERDICT FORM</p>
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find the defendant, Michael Lee Long, Jr., \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of Assault with a Dangerous Weapon against Cynthia Jones-Bear Robe as charged in Count I of the superseding indictment.

1.A. *(Complete if and only if you find the defendant “not guilty” of Assault with a Dangerous Weapon as charged in Count I of the superseding indictment or if you cannot reach a verdict on Assault with a Dangerous Weapon after all reasonable efforts)*

We find the defendant, Michael Lee Long, Jr., \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of the lesser-included offense of Simple Assault.

2. We find the defendant, Michael Lee Long, Jr., \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of Assault with a Dangerous Weapon against K.J. as charged in Count II of the superseding indictment.

2.A. *(Complete if and only if you find the defendant “not guilty” of Assault with a Dangerous Weapon as charged in Count II of the superseding indictment or if you cannot reach a verdict on Assault with a Dangerous Weapon after all reasonable efforts)*

We find the defendant, Michael Lee Long, Jr., \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of the lesser-included offense of Simple Assault.

3. We find the defendant, Michael Lee Long, Jr., \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of Prohibited Person in Possession of a Firearm as charged in the superseding indictment.
4. We find the defendant, Michael Lee Long, Jr., \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of Using a Firearm During and in Relation to a Crime of Violence.
  - 4.A. *(Complete if and only if you find the defendant “guilty” of Using a Firearm During and in Relation to a Crime of Violence as charged in Count V of the superseding indictment.)*

We find, beyond a reasonable doubt, that the defendant, Michael Lee Long, Jr.:  
(place an “X” or check mark in the space provided next to the word or words that you find apply, using the beyond a reasonable doubt standard)

\_\_\_\_\_ carried

\_\_\_\_\_ brandished

\_\_\_\_\_ discharged

a firearm in connection with commission of the crimes charged in Count I or Count II or both.

DATED this \_\_\_\_ day of May, 2016.

\_\_\_\_\_  
FOREPERSON