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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT L. ERICKSON,

Defendant.

No. CR 08-30009-01

**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 January 2, 2008, in Todd County, in Indian Country, in the District of South Dakota, Robert L. Erickson, an Indian, did unlawfully assault Eli H. Antoine with a dangerous weapon, that is, a knife, with intent to do bodily harm to Eli H. Antoine.

Elements

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

One, that on or about January 2, 2008, Mr. Erickson assaulted Eli H. Antoine;

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. Erickson used a dangerous weapon, namely a knife, to commit the assault;

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

Three, that Mr. Erickson 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. Erickson is an Indian; and

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

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 fact that the defendant is an Indian.

Five, that the offense took place in Indian country, namely in Todd County, South Dakota.

The term "Indian country," includes all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

For you to find Mr. Erickson 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. Erickson 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 three essential elements:

One, that on or about January 1, 2008, Mr. Erickson assaulted Eli H. Antoine;

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

Two, that Mr. Erickson is an Indian; and

The parties stipulated that the defendant is an Indian. The effect of this stipulation has previously been explained in this instruction.

Three, that the offense took place in Indian country.

The term “Indian country” has previously been defined for you in this instruction.

For you to find Mr. Erickson 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. Erickson not guilty of this crime.

FINAL INSTRUCTION NO. 3 – COUNT 2 -ASSAULT WITH A
DANGEROUS WEAPON

Count 2 of the indictment charges that, on or about January 2, 2008, in Todd County, in Indian Country, in the District of South Dakota, Robert L. Erickson, a Indian, did unlawfully assault A.W.K., a person who had not attained the age of 18 years, with a dangerous weapon, that is, a knife, with intent to do bodily harm to A.W.K.

Elements

For you to find Mr. Erickson guilty of the “assault with a dangerous weapon” offense charged in **Count 2** 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 January 2, 2008, Mr. Erickson assaulted A.W.K.;

“Assault” was previously defined for you in Final Instruction No. 2.

Two, that Mr. Erickson used a dangerous weapon, namely a knife, to commit the assault;

“Dangerous weapon” was previously defined for you in Final Instruction No. 2.

Three, that Mr. Erickson intended to do bodily harm;

“Intent to do bodily harm” was previously defined for you in Final Instruction No. 2.

Four, that at the time of the assault, A.W.K. had not attained the age of 18 years;

Five, that Mr. Erickson is an Indian; and

The parties have stipulated that the defendant is an Indian. The effect of this stipulation was previously explained in Final Instruction No. 2.

Six, that the offense took place in Indian country, namely in Todd County, South Dakota.

“Indian country” was previously defined for you in Final Instruction No. 2.

For you to find Mr. Erickson 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. Erickson 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 2 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 2 of the indictment, has the following three essential elements:

One, that on or about January 1, 2008, Mr. Erickson assaulted A.W.K.;

“Assault” was previously defined for you in Final Instruction No. 2.

Two, that Mr. Erickson is an Indian; and

The parties stipulated that the defendant is an Indian. The effect of this stipulation has previously been explained in Final Instruction No. 2.

Three, that the offense took place in Indian country.

The term “Indian country” has previously been defined for you in Final Instruction No. 2.

For you to find Mr. Erickson 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. Erickson not guilty of this crime.

FINAL JURY INSTRUCTION NO. 4 - COUNT 3 - ASSAULT WITH A
DANGEROUS WEAPON

Count 3 of the indictment charges that, on or about between October 31, 2007, and January 2, 2008, in Todd County, in Indian Country, in the District of South Dakota, Robert L. Erickson, an Indian, did unlawfully assault Kendra Small Bear with a dangerous weapon, that is, a knife, with intent to do bodily harm to Kendra Small Bear.

Elements

For you to find Mr. Erickson guilty of the “assault with a dangerous weapon” offense charged in **Count 3** of the indictment, the government must prove the following five essential elements beyond a reasonable doubt as to the defendant:

One, that on or about between October 31, 2007, and January 2, 2008, Mr. Erickson assaulted Kendra Small Bear;

“Assault” was previously defined for you in Final Instruction No. 2.

Two, that Mr. Erickson used a dangerous weapon, namely a knife, to commit the assault;

“Dangerous weapon” was previously defined for you in Final Instruction No. 2.

Three, that Mr. Erickson intended to do bodily harm;

“Intent to do bodily harm” was previously defined for you in Final Instruction No. 2.

Four, that Mr. Erickson is an Indian; and

The parties have stipulated that the defendant is an Indian. The effect of this stipulation was previously explained in Final Instruction No. 2.

Five, that the offense took place in Indian country, namely in Todd County, South Dakota.

“Indian country” was previously defined for you in Final Instruction No. 2.

For you to find Mr. Erickson 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. Erickson 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 3 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 3 of the indictment, has the following three essential elements:

One, that on or about January 1, 2008, Mr. Erickson assaulted Kendra Small Bear;

“Assault” was previously defined for you in Final Instruction No. 2.

Two, that Mr. Erickson is an Indian; and

The parties stipulated that the defendant is an Indian. The effect of this stipulation has previously been explained in Final Instruction No. 2.

Three, that the offense took place in Indian country.

The term “Indian country” has previously been defined for you in Final Instruction No. 2.

For you to find Mr. Erickson 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. Erickson not guilty of this crime.

FINAL JURY INSTRUCTION NO. 5 - COUNT 4 - ASSAULT RESULTING IN
SERIOUS BODILY INJURY

Count 4 of the indictment charges that, on or about January 2, 2008, in Todd County, in Indian Country, in the District of South Dakota, Robert L. Erickson, an Indian, did unlawfully assault Eli H. Antoine, and said assault resulted in serious bodily injury.

Elements

For you to find Mr. Erickson guilty of the “assault resulting in serious bodily injury” offense charged in **Count 4** of the indictment, the government must prove the following four essential elements beyond a reasonable doubt as to the defendant:

One, that on or about January 2, 2008, Mr. Erickson assaulted Eli H. Antoine;

“Assault” was previously defined for you in Final Instruction No. 2.

Two, that the assault resulted in serious bodily injury to Eli H. Antoine;

“Serious bodily injury” means injury which involves: (1) a substantial risk of death; (2) extreme physical pain; (3) protracted and obvious disfigurement; or (4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Three, that Mr. Erickson is an Indian; and

The parties have stipulated that the defendant is an Indian. The effect of this stipulation was previously explained in Final Instruction No. 2.

Four, that the offense took place in Indian country, namely in Todd County, South Dakota.

“Indian country” was previously defined for you in Final Instruction No. 2.

For you to find Mr. Erickson guilty of assault resulting in serious bodily injury, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find Mr. Erickson not guilty of this offense.

Lesser Included Offense - Assault by Striking, Beating, or Wounding

If your verdict under this instruction is not guilty of assault resulting in serious bodily injury, or if after all reasonable efforts you are unable to reach a verdict on Count 4 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 assault by striking, beating, or wounding. The crime of assault by striking, beating, or wounding, a lesser included offense of the crime charged in Count 4 of the indictment, has the following three essential elements:

One, that on or about January 1, 2008, Mr. Erickson assaulted Eli H. Antoine by striking, beating, or wounding;

“Assault” was previously defined for you in Final Instruction No. 1.

Two, that Mr. Erickson is an Indian; and

The parties stipulated that the defendant is an Indian. The effect of this stipulation has previously been explained in Final Instruction No. 2.

Three, that the offense took place in Indian country.

The term "Indian country" has previously been defined for you in Final Instruction No. 2.

For you to find Mr. Erickson guilty of the crime of assault by striking, beating, or wounding, the government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find Mr. Erickson not guilty of this crime.

FINAL JURY INSTRUCTION NO. 6 - COUNT 5 - ASSAULT RESULTING IN
SERIOUS BODILY INJURY

Count 5 of the indictment charges that, on or about January 2, 2008, in Todd County, in Indian Country, in the District of South Dakota, Robert L. Erickson, an Indian, did unlawfully assault A.W.K., a person who had not attained the age of 18 years, and said assault resulted in serious bodily injury.

Elements

For you to find Mr. Erickson guilty of the “assault resulting in serious bodily injury” offense charged in **Count 5** of the indictment, the government must prove the following five essential elements beyond a reasonable doubt as to the defendant:

One, that on or about January 2, 2008, Mr. Erickson assaulted A.W.K.;

“Assault” was previously defined for you in Final Instruction No. 2.

Two, that the assault resulted in serious bodily injury to A.W.K.;

“Serious bodily injury” was previously defined for you in Final Instruction No. 5.

Three, that at the time of the assault, A.W.K. had not attained the age of 18 years;

Four, that Mr. Erickson is an Indian; and

The parties have stipulated that the defendant is an Indian. The effect of this stipulation was previously explained in Final Instruction No. 2.

Five, that the offense took place in Indian country, namely in Todd County, South Dakota.

“Indian country” was previously defined for you in Final Instruction No. 2.

For you to find Mr. Erickson guilty of assault resulting in serious bodily injury, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find Mr. Erickson not guilty of this offense.

Lesser Included Offense - Assault by Striking, Beating, or Wounding

If your verdict under this instruction is not guilty of assault resulting in serious bodily injury, or if after all reasonable efforts you are unable to reach a verdict on Count 5 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 assault by striking, beating, or wounding. The crime of assault by striking, beating, or wounding, a lesser included offense of the crime charged in Count 5 of the indictment, has the following three essential elements:

One, that on or about January 1, 2008, Mr. Erickson assaulted A.W.K. by striking, beating, or wounding;

“Assault” was previously defined for you in Final Instruction No. 2.

Two, that Mr. Erickson is an Indian; and

The parties stipulated that the defendant is an Indian. The effect of this stipulation has previously been explained in Final Instruction No. 2.

Three, that the offense took place in Indian country.

The term "Indian country" has previously been defined for you in Final Instruction No. **2**.

For you to find Mr. Erickson guilty of the crime of assault by striking, beating, or wounding, the government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find Mr. Erickson not guilty of this crime.

FINAL INSTRUCTION NO. 7 - 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.

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. 8 - PRESUMPTION OF INNOCENCE
AND BURDEN OF PROOF

Robert L. Erickson 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. Erickson throughout the trial. That presumption alone is sufficient to find him not guilty. The presumption of innocence may be overcome as to Mr. Erickson 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. Therefore, the fact that the defendant did not testify must not be discussed or considered by you in any way when deliberating and arriving at your verdict. 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. Erickson 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. 9 - 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. 10 - 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. 11 - 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 Robert L. Erickson in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

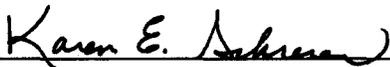
Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. **Remember that you should not tell anyone—including 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 January 21, 2009.



Karen E. Schreier
Chief Judge