


IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

**FILED**  
FEB 21 2008  
  
CLERK

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CR-07-10048
	)	
Raymond E. Otter Robe,	)	<b>FINAL INSTRUCTIONS</b>
	)	
Defendant.	)	

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GENERAL INSTRUCTIONS

F-1

Members of the jury, the instructions I gave you at the beginning of trial and during the trial remain in effect. I now give you some additional instructions.

You must continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some and ignore others, because all are important. This is true even though many of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you as well as those I gave you earlier are in writing and will be available to you in the jury room. Again, all instructions, whenever given and whether in writing or not, must be followed.

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 essential element of the offenses charged.

JURY MUST CONSIDER EACH COUNT SEPARATELY

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A separate crime, or offense, is charged in each count of the indictment.

Each alleged offense, and the evidence pertaining to it, must be considered separately. The fact that you may find the defendant not guilty or guilty as to one of the offenses charged should not control your verdict as to the other offense charged. You must base your verdict on each count solely on the evidence presented relevant to that count.

ESSENTIAL ELEMENTS--COUNT ONE

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The offense of assault with a dangerous weapon, as charged in Count One of the Indictment, has six essential elements, which are:

One, Raymond E. Otter Robe assaulted Myron Oka;

Two, Raymond E. Otter Robe acted with the intent to do bodily harm;

Three, the assault was committed with a dangerous weapon, that is, a knife;

Four, the assault was committed without just cause or excuse;

Five, Raymond E. Otter Robe is an Indian; and

Six, the offense occurred in Indian Country.

For you to find the defendant guilty of this offense, the government must prove each essential element of the offense beyond a reasonable doubt and the government must also prove beyond a reasonable doubt that the defendant was not acting in self defense, otherwise you must find the defendant not guilty.

The offense of assault resulting in serious bodily injury, as charged in Count

Two of the Indictment, has four essential elements, which are:

One, Raymond E. Otter Robe assaulted Myron Oka;

Two, Myron Oka suffered serious bodily injury as a result of the assault;

Three, Raymond E. Otter Robe is an Indian; and

Four, the offense occurred in Indian Country.

For you to find the defendant guilty of this offense, the government must prove each essential element of the offense beyond a reasonable doubt and the government must also prove beyond a reasonable doubt that the defendant was not acting in self defense, otherwise you must find the defendant not guilty.

LESSER INCLUDED OFFENSES

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If your verdict as to the charge of assault resulting in serious bodily injury in Count Two is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on Count Two, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the lesser included offense of assault by striking, beating or wounding.

The offense of assault by striking, beating, or wounding has three essential elements, which are:

One, Raymond E. Otter Robe assaulted Myron Oka by striking, beating, or wounding;

Two, Raymond E. Otter Robe is an Indian; and

Three, the offense occurred in Indian Country.

For you to find the defendant guilty of this lesser included offense the government must prove each essential element of the offense beyond a reasonable doubt and the government must also prove beyond a reasonable doubt that the defendant was not acting in self defense, otherwise you must find the defendant not guilty.

STIPULATED ELEMENTS

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The Government and the Mr. Otter Robe have stipulated -- that is, they have agreed -- that Mr. Otter Robe is an Indian and that the location where the alleged incident occurred is in Indian Country. You must therefore treat these jurisdictional elements as having been proved. Mr. Otter Robe has not, by entering this stipulation, admitted guilt and you may not draw any inference of guilt from the stipulation.

## SELF DEFENSE

F-8

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 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.



BURDEN OF PROOF

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Because the burden is upon the government to prove the accused guilty beyond a reasonable doubt of every essential element of the offenses charged, the defendant has the right to rely upon the failure of the government to establish such proof. The defendant may also rely on the evidence brought out in cross-examination of witnesses for the government.

If, after carefully and impartially considering all the evidence, you do not feel convinced that the defendant is guilty of the charges, you must acquit the defendant.

REASONABLE DOUBT - DEFINED

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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 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.

PROOF OF INTENT OR KNOWLEDGE

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

## INFERENCES

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You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proven, such reasonable inferences as you feel are justified in light of experience and common sense.

## OPINION EVIDENCE - EXPERT WITNESSES

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You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their 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'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.

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses, documents and other things received as exhibits, any facts that have been stipulated -- that is, formally agreed to by the parties, and any facts that have been judicially noticed--that is, facts which I say you may, but are not required to, accept as true, even without evidence.

Certain things are not evidence.

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 sustain 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 strike from the record, or tell you to disregard, is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.
5. As I said earlier, questions from me are not evidence, although the answers are. During the course of the trial I may occasionally ask questions of a

witness, in order to bring out facts not then fully covered in testimony. Please do not assume that I hold any opinion on matters to which my questions may have related.

Further, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence." You should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

## DEFINITIONS

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An “**assault**” is any intentional and voluntary 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.

An “**assault**” also includes battery, that is, the willful infliction of injury upon another, or attempted battery. In this type of “assault” the victim need not experience a fear of immediate bodily harm or even be aware that the defendant was about to assault him.

A “**dangerous weapon**” is an object used in a manner likely to endanger life or inflict serious bodily injury. The object need not be inherently dangerous or a “weapon” by definition. The determination of whether an object is a dangerous weapon depends on the manner in which it was used.

“**Serious bodily injury**” means bodily injury which involves one or more of the following:

- (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.

**“Indian”** means a person who has some Indian blood and is recognized as an Indian. Factors to be considered are membership in an Indian tribe, eligibility for enrollment in an Indian tribe, and whether the individual has held himself or herself out to be an Indian.

**“Indian Country”** means 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, all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

## GENERAL CLOSING INSTRUCTIONS

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You will now go into the jury room and begin your deliberations. In conducting your deliberations and returning your verdict, there are certain rules which you must follow.

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 an agreement if you can, because the 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. Do not come to a decision, however, simply because other jurors think it is right, or simply to reach a verdict. Remember there will not be a transcript of this trial available to you when you retire to the jury room.

Not guilty or guilty are not the only two results a jury can find. There are times when juries cannot agree and the inability to agree is an acceptable return to me, if in fact, the jurors cannot agree. We don't like that because it means we

haven't concluded the trial, but it is also a permissible result.

Third, if you find the defendant is 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. The note should be signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. Do not tell me or anyone else how you stand on your vote numerically or otherwise.

Fifth, your verdict must be based solely on the evidence you heard and saw in this courtroom and on the law which I have given to you in these instructions. Nothing I have said or done is intended to suggest what I think of the evidence or what I think your verdict should be -- that is entirely for you to decide. Remember, statements, arguments, questions, and comments by lawyers, or myself are not evidence.

Sixth, in your consideration of whether the defendant is not guilty or guilty of the offense charged, you must not consider the race, color, religious beliefs, national origin, or sex of the defendant. You are not to return a verdict for or against the defendant unless you would return the same verdict for the crime

without regard to the race, color, religious beliefs, national origin, or sex of the defendant. To emphasize the importance of this consideration, the verdict form contains a certification statement. Each of you should carefully read the statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects the manner in which each of you reached your decision.

Finally, a verdict form has been prepared for your convenience. This form is simply the written notice of the decision that you have reached in this case. The original verdict form will be provided to you in the jury room. You will take this form and, when each of you has agreed on a verdict, your foreperson will fill out the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

You will now take this case, try it fairly and impartially between the parties, and return such a verdict as is warranted under all the evidence and these instructions.