

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
OCT 21 2009

CLERK

UNITED STATES OF AMERICA,

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CR 09-10021

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Plaintiff,

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JURY INSTRUCTIONS

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-VS-

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ALLEN C. SHILLINGSTAD,

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Defendant.

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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 that the defendant committed the crimes of assault with a dangerous weapon and assault resulting in serious bodily injury. The defendant has pleaded not guilty to 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.

There is no burden upon the defendant to prove that he is innocent.

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

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, 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 any 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.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 8

You have heard evidence that the defendant assaulted Theresa White Bull in the past. You may not use this evidence to decide whether the defendant carried out the acts involved in the crimes charged in the indictment. However, if you are convinced beyond a reasonable doubt, based on other evidence introduced, that the defendant did carry out the acts involved in one or more of the crimes charged in the indictment, then you may use this evidence to decide whether the defendant intended to cause Theresa White Bull serious bodily harm or intended to assault her with a dangerous weapon.

Remember, even if you find that the defendant may have committed a similar act in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of prior acts only on the issue of intent.

INSTRUCTION NO. 9

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. 10

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have 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 each witness's education and experience, the soundness of the reasons given for the opinions, acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NO. 11

The indictment charges that the alleged offenses were committed “on or about between” certain dates. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense in question was committed on a date reasonably near the date alleged as to that offense.

INSTRUCTION NO. 12

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

1. On or about between December 14th and December 15, 2008, the defendant, without just cause or excuse, voluntarily and intentionally assaulted Theresa White Bull with a dangerous weapon.
2. A wood board or a plate was used and the item used is a dangerous weapon.
3. The defendant assaulted Theresa White Bull with intent to do bodily harm to Theresa White Bull.
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 as charged in Count I of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Only if you unanimously agree as to which particular alleged weapon was used may you convict the defendant of this offense. You may also find unanimously that both alleged weapons were used.

INSTRUCTION NO. 13

The phrase “dangerous weapon” as used in Instruction No. 12 means any object capable of being readily used by one person to inflict bodily injury upon another person.

INSTRUCTION NO. 14

One of the issues in this case is whether the defendant was intoxicated at the time the act charged in Count I of the indictment was committed.

Being under the influence of alcohol provides a legal excuse for the commission of the crime charged in Count I of the indictment only if the effect of the alcohol made it impossible for the defendant to have the specific intent to commit the offense of assault with a dangerous weapon. Evidence that the defendant acted while under the influence of alcohol may be considered by you, together with all the other evidence, in determining whether or not the defendant did in fact have the specific intent to commit the crime in question.

Voluntary intoxication is not a defense to the crime charged in Count II.

INSTRUCTION NO. 15

If you should unanimously find the defendant “Not Guilty” of the crime of assault with a dangerous weapon as charged in Count I of the indictment, or, if after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count I of the indictment, then you must proceed to determine the guilt or innocence of the defendant as to the crime of simple assault under this Instruction.

The crime of simple assault, a lesser included offense of the crime of assault with a dangerous weapon as charged in Count I of the indictment, has three essential elements, which are:

1. On or about between December 14th and December 15th, 2008, the defendant voluntarily and intentionally assaulted Theresa White Bull.
2. The defendant is an Indian; and
3. The 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 I 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. 16

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

1. On or about between December 14th and December 15th, 2008, the defendant voluntarily and intentionally assaulted Theresa White Bull.
2. The assault resulted in serious bodily injury to Theresa White Bull.
3. The defendant is an Indian; and
4. The alleged offense took place in Indian Country.

For you to find the defendant guilty of this crime 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. 17

“Serious bodily injury” as used in the indictment and Instruction No. 16 means bodily 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.

INSTRUCTION NO. 18

If you should unanimously find the defendant “Not Guilty” of the crime of assault resulting in serious bodily injury as charged in Count II of the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count II of the indictment, then you must proceed to determine the guilt or innocence of the defendant as to the crime of assault by striking, beating, or wounding under this instruction.

The crime of assault by striking, beating, or wounding, a lesser included offense of the crime of assault resulting in serious bodily injury as charged in Count II of the indictment, has three essential elements, which are:

1. On or about between December 14th and December 15th, 2008, the defendant voluntarily and intentionally assaulted Theresa White Bull by striking, beating, or wounding her.
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 assault resulting in serious bodily injury as charged in Count II 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. 19

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 a determination of the intent of the defendant.

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. 20

The indictment in this case alleges that the defendant is an Indian and that the alleged offenses occurred in Indian country. The existence of those two factors is necessary in order for this Court to have jurisdiction over the crimes charged in the indictment.

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

The defendant has not, by entering this agreement or stipulation, admitted his guilt of the offenses charged, and you may not draw any inference of guilt from the stipulation. The only effect of this stipulation is to establish the facts that the defendant is an Indian and that the place where the alleged offenses are claimed to have occurred is in Indian country.

INSTRUCTION NO. 21

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 or verdicts.

INSTRUCTION NO. 22

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 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. 23

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. 24

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-

ALLEN C. SHILLINGSTAD,

Defendant.

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CR 09-10021

VERDICT

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 assault with a dangerous weapon, as explained in Instruction No. 12, find Allen C. Shillingstad:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Allen C. Shillingstad NOT GUILTY of assault with a dangerous weapon, or if, after all reasonable efforts, you are unable to reach a verdict as to that crime, then you must deliberate on the lesser included offense of simple assault as explained in Instruction No. 15, and complete the following:

We, the jury in the above entitled action, as to the crime of simple assault as explained in Instruction No. 15, a lesser included offense of assault with a dangerous weapon, find Allen C. Shillingstad

_____ NOT GUILTY _____ GUILTY

COUNT II

We, the jury in the above entitled action, as to the crime of assault resulting in serious bodily injury, as explained in Instruction No. 16, find Allen C. Shillingstad:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Allen C. Shillingstad NOT GUILTY of assault resulting in serious bodily injury, or if, after all reasonable efforts, you are unable to reach a verdict as to that crime, then you must deliberate on the lesser included offense of assault by striking, beating, or wounding as explained in Instruction No. 18, and complete the following:

We, the jury in the above entitled action, as to the crime of assault by striking, beating, or wounding, as explained in Instruction No. 18, a lesser included offense of assault resulting in serious bodily injury, find Allen C. Shillingstad:

_____ NOT GUILTY _____ GUILTY

Dated this _____ day of October, 2009.

Foreperson