

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRYAN M. DAVIS,

Defendant.

No. CR 09-30027-01-KES

**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 in the indictment charges that on or about September 21, 2008, in Todd County, in the District of South Dakota, Bryan M. Davis did unlawfully assault Michelle E. Oakie, an Indian, with a dangerous weapon, that is, a club, with intent to do bodily harm to Michelle E. Oakie, and did aid and abet the unlawful assault with a dangerous weapon.

***Elements***

For you to find Bryan Davis guilty of Count 1 in the indictment, the prosecution must prove the following six essential elements beyond a reasonable doubt:

**One, that on or about September 21, 2008, Mr. Davis assaulted Michelle Oakie;**

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. Davis used a dangerous weapon, a club, to commit the assault;**

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

**Three, that Mr. Davis was not acting in self defense or the defense of others;**

If a person reasonably believes that force is necessary to protect himself or another person 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 and/or defense of another person.

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 and/or the third person from what he reasonably believes to be a substantial risk of death or great bodily harm.

***Four, that Mr. Davis 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.

***Five, that Ms. Oakie is an Indian and Mr. Davis is not an Indian; and***

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

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the place where the alleged incident occurred, Todd County, is in Indian country.

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 if the jury finds that the alleged incident occurred, it occurred in Indian country.

For you to find Mr. Davis guilty of assault with a dangerous weapon, as charged in Count 1 in the indictment, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find him not guilty.

***Aiding and Abetting***

Mr. Davis is charged in Count 1 of the indictment with aiding and abetting the crime of assault with a dangerous weapon. A person may also be found guilty of assault with a dangerous weapon even if he personally did not

do every act constituting the offense charged if he aided and abetted the commission of assault with a dangerous weapon. In order for Mr. Davis to have aided and abetted the commission of the crime of assault with a dangerous weapon, it must be shown beyond a reasonable doubt that before or at the time the crime was committed:

**One, that Mr. Davis must have known that an assault with a dangerous weapon was committed or going to be committed;**

**Two, that Mr. Davis must have knowingly acted in some way for the purpose of causing and encouraging or aiding the commission of assault with a dangerous weapon;**

**Three, that Mr. Davis intended that bodily harm be inflicted on Ms. Oakie;**

**Four, that Ms. Oakie is an Indian and Mr. Davis is not an Indian; and**

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

For you to find Mr. Davis guilty of assault with a dangerous weapon by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the essential elements of assault with a dangerous weapon were committed by some person or persons and that Mr. Davis aided or abetted the commission of the crime and must further prove beyond a reasonable doubt that Mr. Davis was not acting in self defense or acting in defense of others as defined in this instruction; otherwise you must find Mr. Davis not guilty under Count 1.

FINAL INSTRUCTION NO. 3 – COUNT 2 – ASSAULT RESULTING IN SERIOUS  
BODILY INJURY

Count 2 in the indictment charges that on or about September 21, 2008, in Todd County, in Indian country, in the District of South Dakota, Bryan M. Davis did unlawfully assault Michelle E. Oakie, an Indian, and said assault resulted in serious bodily injury, and did aid and abet the unlawful assault.

***Elements***

For you to find Bryan Davis guilty of Count 2 in the indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

**One, that on or about September 21, 2008, Mr. Davis assaulted Michelle Oakie;**

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

**Two, that the assault resulted in serious bodily injury to Michelle Oakie;**

“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. Davis was not acting in self defense or the defense of others;**

Self defense and/or defense of others was previously defined for you in Final Instruction No. 2.

**Four, that Ms. Oakie is an Indian and Mr. Davis is not an Indian; and  
Five, that the offense took place in Indian country, namely in Todd County, South Dakota.**

The parties stipulated that if the alleged incident occurred, it occurred in Indian Country. The effect of this stipulation has been previously explained in Final Instruction No. 2.

For you to find Mr. Davis guilty of assault resulting in serious bodily injury, as charged in Count 2 in the indictment, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find him not guilty.

***Aiding and Abetting***

Mr. Davis is charged in Count 2 of the indictment with aiding and abetting the crime of assault resulting in serious bodily injury. A person may also be found guilty of assault resulting in serious bodily injury even if he personally did not do every act constituting the offense charged if he aided and abetted the commission of assault resulting in serious bodily injury. In order for Mr. Davis to have aided and abetted the commission of a crime of assault resulting in serious bodily injury, it must be shown beyond a reasonable doubt that before or at the time the crime was committed:

***One, that Mr. Davis must have known that an assault resulting in serious bodily injury was committed or going to be committed;***

***Two, that Mr. Davis must have knowingly acted in some way for the purpose of causing and encouraging or aiding the commission of assault resulting in serious bodily injury;***

***Three, that Ms. Oakie is an Indian and Mr. Davis is not an Indian;***  
**and**

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

For you to find Mr. Davis guilty of assault resulting in serious bodily injury by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the essential elements of assault resulting in

serious bodily injury were committed by some person or persons and that Mr. Davis aided or abetted the commission of the crime and must further prove beyond a reasonable doubt that Mr. Davis was not acting in self defense or in defense of others as defined in Final Instruction No. 2; otherwise you must find Mr. Davis not guilty of assault resulting in serious bodily injury under Count 2.



#### FINAL INSTRUCTION NO. 4 – 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. 5 –  
PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

Bryan Davis 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 the defendant throughout the trial. That presumption alone is sufficient to find the defendant not guilty. The presumption of innocence may be overcome 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. 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 Bryan Davis 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. 6 – 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. 7 – 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 a 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. 8 – 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.

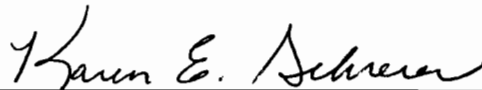
*Second*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

*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 October 14, 2009.



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Karen E. Schreier  
Chief Judge