


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

FILED

FEB 17 2011


CLERK

CENTRAL DIVISION

UNITED STATES OF AMERICA,

CR. 10-30050-RAL

Plaintiff,

REDACTED
FINAL INSTRUCTIONS
TO JURY

-vs-

DONOVAN TOM YAZZIE

Defendant.

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.

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.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, 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 -- this 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.

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 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. 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.

INSTRUCTION NO. 6

You have heard testimony that Defendant made statements to an agent of the Federal Bureau of Investigation and a Cheyenne River Sioux Tribe detective. It is for you to decide:

First, whether Defendant made the statements, and

Second, if so, how much weight you should give to any statement.

In making these decisions you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NO. 7

The indictment in this case charges that the defendant committed two different crimes. Under Count I, the indictment charges that the defendant committed the crime of Assault Resulting in Serious Bodily Injury. Under Count II, the indictment charges that the defendant committed the crime of Child Abuse. The defendant has pleaded not guilty to both 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. 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 element of the crime charged.

There is no burden upon a defendant to prove that he is innocent. Accordingly, the fact that defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 8

The crime of Assault Resulting in Serious Bodily Injury, as charged in Count I of the indictment, has five elements, which are:

One, that on or about the 16th day of April, 2010, at Eagle Butte, in Dewey County, in the District of South Dakota, Donovan Tom Yazzie, without just cause, did unlawfully assault [name redacted];

Two, that such assault was done voluntarily and intentionally;

Three, that such assault resulted in serious bodily injury;

Four, that Donovan Tom Yazzie is an Indian; and

Five, that the offense took place in Indian Country.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, Donovan Tom Yazzie, then you must find the defendant guilty of the crime charged; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 9

As used in Count I of the indictment, the term “serious bodily injury” means bodily injury which involves—

- (A) a substantial risk of death;
- (B) extreme physical pain;
- (C) protracted and obvious disfigurement; or
- (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

The law distinguishes between “serious bodily injury” and “bodily injury.” Bodily injury is a lesser degree of injury than serious bodily injury. The term “bodily injury” means—

- (A) a cut, abrasion, bruise, burn, or disfigurement;
- (B) physical pain;
- (C) illness;
- (D) impairment of the function of a bodily member, organ, or mental faculty; or
- (E) any other injury to the body, no matter how temporary.

INSTRUCTION NO. 10

Intent or knowledge 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 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.

An assault resulting in serious bodily injury does not require that the defendant intended to cause serious bodily injury; it requires only that defendant committed an assault and that the act or acts constituting the assault were done voluntarily and intentionally and that the assault resulted in serious bodily injury.

An "assault" for purposes of these instructions is any offensive physical contact as well as 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.

INSTRUCTION NO. 11

If your verdict under Instruction No. 8 as to defendant under Count I of the indictment is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on Instruction No. 8, you should record that decision on the verdict forms and go on to consider whether defendant is guilty of 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 charged in Count I of the indictment, has five elements, which are:

One, that on or about the 16th day of April, 2010, at Eagle Butte, in Dewey County, in the District of South Dakota, Donovan Tom Yazzie, without just cause, did unlawfully assault [name redacted];

Two, that such assault was done voluntarily and intentionally;

Three, that such assault was committed by Donovan Tom Yazzie striking, beating, or wounding [name redacted];

Four, that Donovan Tom Yazzie is an Indian; and

Five, that the offense took place in Indian Country.

For you to find defendant guilty of Assault by Striking, Beating, or Wounding, a lesser included offense of the crime charged under Count I, the Government must prove all of these elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

The crime of Child Abuse, as charged in Count II of the indictment, has five elements, which are:

One, that on or about the 16th day of April, 2010, at Eagle Butte, in Dewey County, in the District of South Dakota, Donovan Tom Yazzie did abuse, expose, torture, torment, or cruelly punish [name redacted];

Two, that Donovan Tom Yazzie committed such act without just cause;

Three, that at the time of the offense, [name redacted] was under the age of seven years;

Four, that Donovan Tom Yazzie is an Indian; and

Five, that the offense took place in Indian Country.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, Donovan Tom Yazzie, then you must find the defendant guilty of the crime charged; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 13

In the crime of child abuse, the defendant must have criminal intent. To constitute criminal intent it is not necessary that there should exist an intent to violate the law. When a person intentionally does an act which the law declares to be a crime, the person is acting with criminal intent, even though the person may not know that the conduct is unlawful.

INSTRUCTION NO. 14

As used in Count II of the indictment:

The term "abuse" means physical maltreatment;

The term "expose" means to place in a position where the child is open to a foreseeable harm;

The term "torture" means to cause intense suffering to or to punish or coerce by inflicting excruciating pain;

The term "torment" means to cause severe and unusually persistent or recurrent distress of body or mind;

The term "cruelly punish" means to punish in such a way as to intentionally inflict physical suffering with reckless indifference to pain.

INSTRUCTION NO. 15

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 Government, 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 places where the alleged offenses are claimed to have occurred is in Indian country.

INSTRUCTION NO. 16

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. 17

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, My Space, LinkedIn, YouTube 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. The verdict whether guilty or not 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.

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.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA,	*	CR 10-30050-RAL
Plaintiff,	*	
	*	VERDICT FORM
-vs-	*	
	*	
DONOVAN TOM YAZZIE,	*	
Defendant.	*	

We, the jury, duly empaneled and sworn to try the issues in this case find as follows:

1. We find Defendant Donovan Tom Yazzie, _____ (fill in either “guilty” or “not guilty”) of Assault Resulting in Serious Bodily Injury.
2. [*Answer if, and only if, you found Defendant “not guilty” of Assault Resulting in Serious Bodily Injury. If you found the Defendant “guilty” of Assault Resulting in Serious Bodily Injury, then leave this blank.*] We find Defendant Donovan Tom Yazzie, _____ (fill in either “guilty” or “not guilty”) of the offense of Assault by Striking, Beating, or Wounding.
3. We find Defendant Donovan Tom Yazzie _____ (fill in either “guilty” or “not guilty”) of Child Abuse.

Dated February ____, 2011

Foreperson