

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA

**FILED**

AUG 4 - 2011

  
CLERK

CENTRAL DIVISION

\*\*\*\*\*

UNITED STATES OF AMERICA,

CR. 10-30088-RAL

Plaintiff,

FINAL INSTRUCTIONS  
TO JURY

-vs-

DUANE DALE BIG EAGLE

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. If you conclude that any witness has willfully sworn falsely to any material fact in issue, you may disregard the whole or any part of such witness' testimony.

INSTRUCTION NO. 6

You have heard evidence that some witnesses were once convicted of a crime. You may use that evidence only to help you decide whether to believe such witnesses and how much weight to give to their testimony.

INSTRUCTION NO. 7

You have heard evidence that certain witnesses received or hope to receive a benefit from cooperating with the Government. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by any agreements with the Government or hope for a benefit in the future is for you to determine.

The witness's guilty plea and the Government's promises cannot be considered by you as any evidence of this defendant's guilt. The witness's guilty plea can be considered by you only for the purpose of determining how much, if at all, to rely upon the witness's testimony.

INSTRUCTION NO. 8

You have heard testimony from certain witnesses about their participation in the crime charged against the defendant. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by their desire to assist the Government is for you to determine.



INSTRUCTION NO. 9

Under Counts I and III, the indictment charges that the defendant committed the crime of conspiracy to commit bribery of an Indian tribal official. Under Counts II and IV, the indictment charges that the defendant committed the crime of bribery involving an agent of an Indian tribal government. 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. 10

The crime of conspiracy to commit bribery of an Indian tribal official, as charged in Count I of the indictment, has four elements, which are:

*One*, that between or about July 19, 2005, and continuing thereafter until on or about December 15, 2005, at Fort Thompson and elsewhere in the District of South Dakota, two or more persons reached an agreement or came to an understanding to corruptly offer and give, and agreed to offer and give, and to corruptly accept and agree to accept a thing of value intending to influence and reward Duane Dale Big Eagle and Scott Raue in connection with a transaction and series of transactions of the Crow Creek Tribal Schools District involving \$5,000 or more.;

*Two*, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

*Three*, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding;

*Four*, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly did one or more of the following acts for the purpose of carrying out or carrying forward the agreement or understanding:

1. Between on or about July 19, 2005, and continuing thereafter until on or about December 12, 2005, Royal Kutz, doing business as Kutz Construction, submitted billing statements for construction work completed at Crow Creek Tribal Schools requesting payment from Crow Creek Tribal Schools;
2. Between on or about July 19, 2005, and continuing thereafter until on or about December 12, 2005, Royal Kutz, doing business as Kutz Construction, negotiated Crow Creek Tribal Schools checks, depositing some of the proceeds and having the remainder remitted in cash; and
3. Between on or about July 19, 2005, and continuing thereafter until on or about December 13, 2005, Royal Kutz, doing business as Kutz Construction, made cash payments to Scott Raue, who retained a portion of the payment and also gave a portion to Duane Dale Big Eagle, for the purpose of influencing or rewarding these tribal employees for official actions favoring Kutz Construction.

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

INSTRUCTION NO. 11

The crime of bribery involving an agent of an Indian tribal government as charged in Count II of the indictment, has four elements, which are:

*One:* the defendant was an agent of the Crow Creek Sioux Tribe;

*Two:* On or about December 13, 2005, at Stephan, and elsewhere, in the District of South Dakota, the defendant corruptly accepted something of value from Royal Kutz and Scott Raue intending to be influenced and rewarded in connection with a transaction and series of transactions of the Crow Creek Sioux Tribe and the Crow Creek Tribal Schools;

*Three:* the transaction or series of transactions involved something of a value of \$5,000 or more;

*Four:* The Crow Creek Sioux Tribe received federal benefits in excess of \$10,000 in the one-year period beginning January 1, 2008, pursuant to a federal program involving a grant from the Bureau of Indian Affairs, Bureau of Indian Education.

As used in this instruction, the term "agent" means a person authorized to act on behalf of the Crow Creek Sioux Tribe and includes an employee, officer, or representative.

As used in this instruction, the term "corruptly" means that the defendant acted voluntarily and intentionally and, at least in part, in return for being influenced in connection with a transaction and series of transactions of the Crow Creek Sioux Tribe and the Crow Creek Tribal Schools.

INSTRUCTION NO. 12

The crime of conspiracy to commit bribery of an Indian tribal official, as charged in Count III of the indictment, has four elements, which are:

*One*, that between or about May of 2008, and continuing thereafter until on or about October 21, 2008, at Fort Thompson and elsewhere in the District of South Dakota, two or more persons reached an agreement or came to an understanding to solicit and accept, a thing of value, that being cash, from Archie Baumann of First Dakota Enterprises, in connection with a transaction and series of transactions of the Crow Creek Tribal Schools District involving \$5,000 or more.;

*Two*, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

*Three*, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding;

*Four*, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly did one or more of the following acts for the purpose of carrying out or carrying forward the agreement or understanding:

1. In or about May of 2008, Archie Baumann, Randy Shields, Norman Thompson, Sr., and other tribal representatives and members, met to discuss a loan transaction between Archie Baumann and the Crow Creek Sioux Tribe;
2. On or about September 2, 2008, Archie Baumann, doing business as First Dakota Enterprises, entered into a contract with the Crow Creek Sioux Tribal Schools to build staff housing for the Crow Creek Sioux Tribal Schools in Stephan;
3. Between on or about July 17, 2008, and continuing thereafter until on or about October 21, 2008, the conspirators caused to have issued cashier's checks from the Crow Creek Sioux Tribe made payable to Archie Baumann, either personally or through First Dakota Enterprises; and
4. Between on or about July 17, 2008, and continuing thereafter until on or about October 21, 2008, Archie Baumann dispensed checks and cash payments to tribal officials, including the Vice Chairman, Randy Shields, and the Tribal Council Treasurer, Norman Thompson, Sr., either directly or through intermediaries such as Duane Dale Big Eagle to reward or influence their official actions with regard to loans Archie Baumann made to the Crow Creek Sioux Tribe, and with regard to the First Dakota Enterprises housing contract with the Crow Creek Sioux Tribal Schools.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, Duane Dale Big Eagle, 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

The crime of aiding and abetting the acceptance of a bribe involving an agent of an Indian tribal government, as charged in Count IV of the Indictment, has four elements, which are:

*One.* Randy Shields and Norman Thompson, Sr. were agents of the Crow Creek Sioux Tribe Tribal Council or Crow Creek Tribal School's School Board;

*Two.* On or about October 21, 2008, at Fort Pierre, in the District of South Dakota, Randy Shields or Norman Thompson, Sr. corruptly accepted or agreed to accept for the benefit of Randy Shields or Norman Thompson, Sr., from Archie Baumann, something of value, that is, cash, in connection with a transaction and series of transactions of the Crow Creek Sioux Tribe and the Crow Creek Tribal Schools;

*Three.* Defendant Duane Dale Big Eagle willfully aided and abetted the corrupt acceptance or agreement to accept a thing of value by Randy Shields or Norman Thompson, Sr. from Archie Baumann;

*Four.* Such transaction and series of transactions involved something of a value of \$5,000 or more; and

*Five.* The Crow Creek Sioux Tribe received federal benefits in excess of \$10,000 in the one-year period beginning January 1, 2008, pursuant to a federal program involving a grant from the Bureau of Indian Affairs, Bureau of Indian Education.

A person may be found guilty of bribery involving an agent of an Indian tribal government even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of bribery involving an agent of an Indian tribal government.

In order to have aided and abetted the commission of a crime, Defendant Duane Dale Big Eagle must, before or at the time the crime was committed:

*One.* Have known that bribery involving an agent of an Indian tribal government was being committed or going to be committed; and

*Two.* Have knowingly acted in some way for the purpose of aiding the commission of bribery involving an agent of an Indian tribal government; and

*Three.* Knowingly and willfully aided the commission of such bribery.

For you to find the defendant guilty of bribery involving an agent of an Indian tribal government by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of bribery involving an agent of an Indian tribal government were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way that advances some offense, does not thereby become an aider and abettor.

As used in this instruction, the term "agent" means a person authorized to act on

behalf of the Crow Creek Sioux Tribe and includes an employee, officer, or representative.

As used in this instruction, the term "corruptly" means that the defendant acted voluntarily and intentionally and, at least in part, in return for being influenced in connection with a transaction and series of transactions of the Crow Creek Sioux Tribe and the Crow Creek Tribal Schools.

INSTRUCTION NO. 14

For you to find the defendant guilty of either Counts I or III, the Government must prove that the defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is a defendant or named in the indictment.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme. You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

You must decide, after considering all of the evidence, whether each of the conspiracies alleged in Counts I and III of the indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

INSTRUCTION NO. 15

It is not necessary that the act done in furtherance of the conspiracy be in itself unlawful. It may be perfectly innocent in itself.

It is not necessary that the defendant have personally committed the act, known about it, or witnessed it. It makes no difference which of the conspirators did the act. This is because a conspiracy is a kind of "partnership" so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts of every other member done to further their scheme.

It is not necessary that the Government prove, beyond a reasonable doubt, that more than one act was done in furtherance of the conspiracy. It is sufficient if the Government proves beyond a reasonable doubt, *one* such act; but in that event, in order to return a verdict of guilty, you must unanimously agree upon which act was done.



INSTRUCTION NO. 16

It is not necessary for the Government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

INSTRUCTION NO. 18

You may consider acts knowingly done and statements knowingly made by a defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, for a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

Acts and statements which are made before the conspiracy began or after it ended are only admissible against the person making them and should not be considered by you against anyone else.

INSTRUCTION NO. 19

To prove the payment of an illegal bribe, the government must prove beyond a reasonable doubt the existence of a quid pro quo. The quid pro quo requirement, that is, the relationship between the bribe and the official act, may be satisfied if the bribe is made with the corrupt intent to influence a general course of conduct. It is not necessary for the government to link any particular payment to any particular action.

Rather, it is sufficient for the government to prove that the payor intended for a payment to induce the official to adopt a specific course of action. The quid pro quo requirement is satisfied so long as the evidence proves a corrupt course of conduct of favors and gifts flowing to a public official in exchange for a pattern of official actions favorable to the payor.

INSTRUCTION NO. 20

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.

INSTRUCTION NO. 21

As it pertains to Count IV of the Indictment, you may find that Defendant Duane Dale Big Eagle acted knowingly if you find beyond a reasonable doubt that the defendant was aware of a high probability that Norman Thompson, Sr. or Randy Shields were being bribed by Archie Baumann and that the defendant deliberately avoided learning the truth. The element of knowledge may be inferred if the defendant deliberately closed his eyes to what would otherwise have been obvious to him. You may not find the defendant acted “knowingly” if you find he was merely negligent, careless or mistaken as to bribery taking place between Archie Baumann and members of the Crow Creek Sioux Tribal government.

INSTRUCTION NO. 22

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

There has been testimony about a statute of limitations. You are instructed not to be concerned about any statute of limitations, as long as you are satisfied that evidence of events occurring after, or beginning on or about, July 19, 2005, prove beyond a reasonable doubt each element of the crimes charged.

INSTRUCTION NO. 23

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. 24

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,  
Plaintiff,

CR 10-30088-RAL

VERDICT FORM

-vs-

DUANE DALE BIG EAGLE,  
Defendant.

\*\*\*\*\*

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

1. We find Defendant Duane Dale Big Eagle, \_\_\_\_\_ (fill in either "guilty" or "not guilty") of conspiracy to commit bribery of an Indian tribal official, as charged in Count I of the Indictment.
2. We find Defendant Duane Dale Big Eagle, \_\_\_\_\_ (fill in either "guilty" or "not guilty") of bribery involving an agent of an Indian tribal government, as charged in Count II of the Indictment.
3. We find Defendant Duane Dale Big Eagle, \_\_\_\_\_ (fill in either "guilty" or "not guilty") of conspiracy to commit bribery of an Indian tribal official, as charged in Count III of the Indictment.
4. We find Defendant Duane Dale Big Eagle, \_\_\_\_\_ (fill in either "guilty" or "not guilty") of aiding and abetting a bribery involving an agent of an Indian tribal government, as charged in Count IV of the Indictment.

Dated August \_\_\_, 2011

\_\_\_\_\_  
Foreperson