

**FILED**

AUG 22 2013

*[Signature]*  
CLERK

**UNITED STATES DISTRICT COURT**

**DISTRICT OF SOUTH DAKOTA**

**SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

No. CR 13-40013-01-KES

Plaintiff,

vs.

JEROME ROUSE,

**FINAL  
INSTRUCTIONS  
TO THE JURY**

Defendant.

**TABLE OF CONTENTS**

FINAL INSTRUCTIONS

NO. 1 – INTRODUCTION . . . . . 1

NO. 2 – COUNT 1: ASSAULT WITH A DANGEROUS WEAPON . . . . . 2

NO. 3 – COUNT 2: ASSAULT RESULTING IN SERIOUS BODILY  
INJURY . . . . . 5

NO. 4 – COUNT 3: ASSAULT WITH A DANGEROUS WEAPON . . . . . 8

NO. 5 – COUNT 4: ASSAULT RESULTING IN SERIOUS BODILY  
INJURY . . . . . 11

NO. 6 – LESSER INCLUDED OFFENSE . . . . . 14

NO. 7 – IMPEACHMENT . . . . . 15

NO. 8 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF . . 16

NO. 9 – REASONABLE DOUBT . . . . . 17

NO. 10 – DUTY TO DELIBERATE . . . . . 18

NO. 11 – DUTY DURING DELIBERATIONS . . . . . 20

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** of the Superseding Indictment charges Rouse with “assault with a dangerous weapon.” For you to find Rouse guilty of **Count 1** in the Superseding Indictment, the prosecution must prove beyond a reasonable doubt *all* of the following six essential elements:

**One, that on or about November 14, 2012, Rouse assaulted Kenneth Carufel;**

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 Rouse used a dangerous weapon, namely a stick, to commit the assault;**

A “dangerous weapon” is any object capable of being readily used by one person to inflict bodily injury upon another person.

**Three, that Rouse 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 which may aid in the determination of the defendant’s intent.

**Four, that Rouse did not act in self defense or defense of others;**

“Acting in self defense or defense of others” means 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 he uses such force.

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 or another person from what he reasonably believes to be a substantial risk of death or great bodily harm.

A defendant asserting self defense or defense of others is not required to retreat before resorting to force, but the availability of retreat may be a factor for you, the jury, to consider in evaluating whether unreasonable force was used. An aggressor need not have been armed in order for a defendant to claim self defense or defense of others, although whether an aggressor was armed may be relevant in determining the degree of force a defendant was entitled to used.

**Five, that Rouse is an Indian;**

A person is considered an “Indian” if that person has some Indian blood **and** if that person is recognized as an Indian. To determine whether the person is recognized as an Indian, you may consider the following factors:

- (1) Whether the person is enrolled in a tribe.
- (2) Whether the government has provided the person with assistance reserved only to Indians.
- (3) Whether the person enjoys the benefits of tribal affiliation.
- (4) Whether the person is socially recognized as an Indian because he lives on the reservation and participates in Indian social life.

**And six, that the offense took place in Indian Country, namely at New Marty Housing in the District of South Dakota.**

The term “Indian Country” is defined as:

- (a) 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;

- (b) 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; or
- (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

If all of these elements have been proved beyond a reasonable doubt as to Rouse and if it has further been proved beyond a reasonable doubt that Rouse was not acting in self defense or defense of others, then you must find Rouse guilty of the crime charged under Count 1; otherwise you must find Rouse not guilty of the crime under Count 1.

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

**Count 2** of the Superseding Indictment charges Rouse with “assault resulting in serious bodily injury.” For you to find Rouse guilty of **Count 2** of the Superseding Indictment, the prosecution must prove beyond a reasonable doubt *all* of the following five essential elements:

**One, that on November 14, 2012, Rouse assaulted Kenneth Carufel;**

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 the assault resulted in serious bodily injury;**

“Serious bodily injury” means injury that 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 Rouse did not act in self defense or defense of others;**

“Acting in self defense or defense of others” means 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 he uses such force.

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 or another person from what he reasonably believes to be a substantial risk of death or great bodily harm.

A defendant asserting self defense or defense of others is not required to retreat before resorting to force, but the availability of retreat

may be a factor for you, the jury, to consider in evaluating whether unreasonable force was used. An aggressor need not have been armed in order for a defendant to claim self defense or defense of others, although whether an aggressor was armed may be relevant in determining the degree of force a defendant was entitled to use.

**Four, that Rouse is an Indian;**

A person is considered an "Indian" if that person has some Indian blood **and** if that person is recognized as an Indian. To determine whether the person is recognized as an Indian, you may consider the following factors:

- (1) Whether the person is enrolled in a tribe.
- (2) Whether the government has provided the person with assistance reserved only to Indians.
- (3) Whether the person enjoys the benefits of tribal affiliation.
- (4) Whether the person is socially recognized as an Indian because he lives on the reservation and participates in Indian social life.

**And five, that the offense took place in Indian Country, namely at New Marty Housing in the District of South Dakota.**

The term "Indian Country" is defined as:

- (a) 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;

- (b) 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; or
- (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

If all of these elements have been proved beyond a reasonable doubt as to Rouse and if it has further been proved beyond a reasonable doubt that Rouse was not acting in self defense or defense of others, then you must find Rouse guilty of the crime charged under Count 2; otherwise you must find Rouse not guilty of the crime under Count 2.



FINAL INSTRUCTION NO. 4 – COUNT 3: ASSAULT WITH A DANGEROUS  
WEAPON

**Count 3** of the Superseding Indictment charges Rouse with “assault with a dangerous weapon.” For you to find Rouse guilty of **Count 3** in the Superseding Indictment, the prosecution must prove beyond a reasonable doubt *all* of the following six essential elements:

**One, that on or about between March 1, 2013 and May 1, 2013, Rouse assaulted Ryan Little;**

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 Rouse used a dangerous weapon, namely a chair, to commit the assault;**

A “dangerous weapon” is any object capable of being readily used by one person to inflict bodily injury upon another person.

**Three, that Rouse 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 which may aid in the determination of the defendant’s intent.

**Four, that Rouse did not act in self defense or defense of others;**

“Acting in self defense or defense of others” means 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 he uses such force.

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 or another person from what he reasonably believes to be a substantial risk of death or great bodily harm.

A defendant asserting self defense or defense of others is not required to retreat before resorting to force, but the availability of retreat may be a factor for you, the jury, to consider in evaluating whether unreasonable force was used. An aggressor need not have been armed in order for a defendant to claim self defense or defense of others, although whether an aggressor was armed may be relevant in determining the degree of force a defendant was entitled to used.

***Five, that Rouse is an Indian;***

A person is considered an “Indian” if that person has some Indian blood **and** if that person is recognized as an Indian. To determine whether the person is recognized as an Indian, you may consider the following factors:

- (1) Whether the person is enrolled in a tribe.
- (2) Whether the government has provided the person with assistance reserved only to Indians.
- (3) Whether the person enjoys the benefits of tribal affiliation.
- (4) Whether the person is socially recognized as an Indian because he lives on the reservation and participates in Indian social life.

***And six, that the offense took place in Indian Country, namely at New Marty Housing in the District of South Dakota.***

The term “Indian Country” is defined as:

- (a) 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;

- (b) 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; or
- (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

If all of these elements have been proved beyond a reasonable doubt as to Rouse and if it has further been proved beyond a reasonable doubt that Rouse was not acting in self defense or defense of others, then you must find Rouse guilty of the crime charged under Count 3; otherwise you must find Rouse not guilty of the crime under Count 3.

FINAL INSTRUCTION NO. 5 – COUNT 4: ASSAULT RESULTING IN SERIOUS  
BODILY INJURY

**Count 4** of the Superseding Indictment charges Rouse with “assault resulting in serious bodily injury.” For you to find Rouse guilty of **Count 4** of the Superseding Indictment, the prosecution must prove beyond a reasonable doubt *all* of the following five essential elements:

**One, that on or about between March 1, 2013 and May 1, 2013, Rouse assaulted Ryan Little;**

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 the assault resulted in serious bodily injury;**

“Serious bodily injury” means injury that 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 Rouse did not act in self defense or defense of others;**

“Acting in self defense or defense of others” means 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 he uses such force.

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 or another person from what he reasonably believes to be a substantial risk of death or great bodily harm.

A defendant asserting self defense or defense of others is not required to retreat before resorting to force, but the availability of retreat may be a factor for you, the jury, to consider in evaluating whether unreasonable force was used. An aggressor need not have been armed in order for a defendant to claim self defense or defense of others, although whether an aggressor was armed may be relevant in determining the degree of force a defendant was entitled to use.

**Four, that Rouse is an Indian;**

A person is considered an "Indian" if that person has some Indian blood **and** if that person is recognized as an Indian. To determine whether the person is recognized as an Indian, you may consider the following factors:

- (1) Whether the person is enrolled in a tribe.
- (2) Whether the government has provided the person with assistance reserved only to Indians.
- (3) Whether the person enjoys the benefits of tribal affiliation.
- (4) Whether the person is socially recognized as an Indian because he lives on the reservation and participates in Indian social life.

**And five, that the offense took place in Indian Country, namely at New Marty Housing in the District of South Dakota.**

The term "Indian Country" is defined as:

- (a) 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;

- (b) 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; or
- (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

If all of these elements have been proved beyond a reasonable doubt as to Rouse and if it has further been proved beyond a reasonable doubt that Rouse was not acting in self defense or defense of others, then you must find Rouse guilty of the crime charged under Count 4; otherwise you must find Rouse not guilty of the crime under Count 4.

FINAL INSTRUCTION NO. 6 – LESSER INCLUDED OFFENSE

If your verdict on any of the offenses charged against Rouse is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict as to an offense charged, you should record that decision on the verdict form and go on to consider whether Rouse is guilty of the crime of simple assault under this instruction. The crime of simple assault has four elements, which are:

- One, that Rouse assaulted the person named in the Count;***
- Two, that Rouse did not act in self defense or defense of others;***
- Three, that Rouse is an Indian;***
- And four, that the alleged offense occurred in Indian Country.***

For you to find Rouse guilty of simple assault, the Government must prove all of these elements beyond a reasonable doubt, and must prove beyond a reasonable doubt that Rouse was not acting in self defense or defense of others; otherwise you must find Rouse not guilty of simple assault.

FINAL INSTRUCTION NO. 7 – IMPEACHMENT

In Preliminary Instruction No. 6, 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. 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’s testimony.



FINAL INSTRUCTION NO. 8 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of an offense charged against him.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.
- This burden means that you must find the defendant not guilty of an offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 9 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 10 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.

- You must consider all of the evidence bearing on each question before you.
- Take all the time that you feel is necessary.
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 11 – DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty, I will decide what his sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated August 22, 2013.

A handwritten signature in black ink, reading "Karen E. Schreier", written over a horizontal line.

Karen E. Schreier  
United States District Judge