

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

UNITED STATES OF AMERICA, Plaintiff, vs. FRANK LONG BLACK CAT, Defendant.	25-CR-50015-CCT FINAL INSTRUCTIONS TO THE JURY
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TABLE OF CONTENTS

FINAL INSTRUCTION NO. 1 – INTRODUCTION 1

FINAL INSTRUCTION NO. 2 – ASSAULT WITH A DANGEROUS WEAPON..... 2

FINAL INSTRUCTION NO. 3 – LESSER-INCLUDED OFFENSE OF SIMPLE
ASSAULT 4

FINAL INSTRUCTION NO. 4 – INTOXICATION..... 5

FINAL INSTRUCTION NO. 5 – FLIGHT 6

FINAL INSTRUCTION NO. 6 – KNOWLEDGE AND INTENT 7

FINAL INSTRUCTION NO. 7 – IMPEACHMENT..... 8

FINAL INSTRUCTION NO. 8 – EXPERT WITNESS 9

FINAL INSTRUCTION NO. 9 – PRESUMPTION OF INNOCENCE AND BURDEN
OF PROOF 10

FINAL INSTRUCTION NO. 10 – REASONABLE DOUBT 11

FINAL INSTRUCTION NO. 11 – DUTY TO DELIBERATE 12

FINAL INSTRUCTION NO. 12 – DUTY DURING DELIBERATIONS..... 13

VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of 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 – ASSAULT WITH A DANGEROUS WEAPON

For you to find Frank Long Black Cat guilty of “assault with a dangerous weapon” as charged in the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that on or about October 1, 2024, Frank Long Black Cat assaulted Jacob Two Bulls with the specific intent to cause bodily harm;

“Assault” means any intentional and voluntary attempt or threat to injure another person, combined with the apparent present ability to do so, which is sufficient to put the other person in fear of immediate bodily harm or any intentional and voluntary harmful and offensive touching of another person without justification or excuse.

“Bodily harm” means an injury that is painful and obvious or is of a type for which medical attention would ordinarily be sought, including (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.

To find specific intent, there must exist in the mind of the perpetrator the specific intent to do bodily harm to the alleged victim. If the defendant acted without such specific intent, the crime of “assault with a dangerous weapon” has not been committed.

Two, that Frank Long Black Cat used a dangerous weapon, specifically a knife;

“Dangerous weapon” means an object with the capacity to endanger life or inflict bodily harm and used in a manner likely to do so.

Three, that the assault happened at Frank Waters Sr.’s residence in Number 4 Housing Community in Indian Country in the District of South Dakota;

Frank Waters Sr.’s residence is a location that falls within Indian Country. Therefore, if you find beyond a reasonable doubt that the act alleged occurred at Frank Waters Sr.’s residence, this element of the offense has been met.

Four, that Frank Long Black Cat 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.

It is not necessary that all of these factors be present. Rather, the jury is to consider all of the evidence in determining whether the government has proved beyond a reasonable doubt that the defendant is an Indian.

And five, that Frank Long Black Cat did not act in self-defense.

If a person reasonably believes that force is necessary to protect himself 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.

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

For you to find Mr. Long Black Cat guilty of the offense charged in the Indictment, the government must prove all five of the essential elements beyond a reasonable doubt. Otherwise, you must find Mr. Long Black Cat not guilty of the offense charged in the Indictment.

FINAL INSTRUCTION NO. 3 – LESSER-INCLUDED OFFENSE OF SIMPLE
ASSAULT

If your verdict for assault with a dangerous weapon as charged in the Indictment is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on the crime of assault with a dangerous weapon as charged in the Indictment, then you should record that decision on the verdict form and go on to consider whether Frank Long Black Cat is guilty of simple assault, a lesser-included offense of assault with a dangerous weapon. The crime of simple assault has the following four essential elements that the government must prove beyond a reasonable doubt:

One, that on or about October 1, 2024, Frank Long Black Cat assaulted Jacob Two Bulls;

The term “assault” has previously been defined for you above.

Two, that Frank Long Black Cat is an Indian;

The term “Indian” has been previously defined for you above.

Three, that the assault happened at Frank Waters Sr.’s residence in Number 4 Housing Community within Indian Country in the District of South Dakota.

Frank Waters Sr.’s residence is a location that falls within Indian Country. Therefore, if you find beyond a reasonable doubt that the act alleged occurred at Frank Waters Sr.’s residence, this element of the offense has been met.

And four, that Frank Long Black Cat did not act in self-defense.

The term “self-defense” has been previously defined for you above.

For you to find Frank Long Black Cat guilty of simple assault, a lesser-included offense of assault with a dangerous weapon, the government must prove all four elements beyond a reasonable doubt. Otherwise, you must find Frank Long Black Cat not guilty of this crime.

FINAL INSTRUCTION NO. 4 – INTOXICATION

One of the issues in this case is whether the defendant was intoxicated at the time the acts being charged in the Indictment were committed.

Being under the influence of alcohol provides a legal excuse for the commission of a crime only if the effect of the alcohol makes 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 he did in fact have the specific intent to commit such an offense.

FINAL INSTRUCTION NO. 5 – FLIGHT

You may consider whether any evidence of flight by the defendant shows consciousness of guilt of an offense charged. In considering any evidence of flight, remember there may be reasons for this conduct which are consistent with innocence.

FINAL INSTRUCTION NO. 6 – KNOWLEDGE AND INTENT

Intent or knowledge may be proven like anything else. You may consider any statements made or acts done by the defendant and all the facts and circumstances in evidence that 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.

FINAL INSTRUCTION NO. 7 – 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 has said or done something, or has 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, the statements were not admitted to prove that the contents of those statements are 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, if any, you think it deserves.

Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. 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.

FINAL INSTRUCTION NO. 8 – EXPERT WITNESS

You have heard testimony from a person described as an expert. Persons who, by knowledge, skill, training, education or experience, have become an 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.

FINAL INSTRUCTION NO. 9 – 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 government proves, beyond a reasonable doubt, all of the elements of the offense charged against him.

The burden is always on the government 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 government'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 the offense charged against him, unless the government proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 10 – REASONABLE DOUBT

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

- A reasonable doubt may arise from evidence produced by the government 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 government's lack of evidence.

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

FINAL INSTRUCTION NO. 11 – 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 government has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the government 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 the evidence bearing on each element 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. 12 – 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 guilty or not guilty. If the defendant is guilty, I will decide what the 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 all Instructions, whether written or not. 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 November 19, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'C. Theeler', is written over a horizontal line.

CAMELA C. THEELER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>FRANK LONG BLACK CAT,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">5:25-CR-50015-CCT</p> <p style="text-align: center;">VERDICT FORM</p>
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We, the Jury, unanimously find the defendant, Frank Long Black Cat, as follows:

ASSAULT WITH A DANGEROUS WEAPON		VERDICT
Step One:	On the charge of “assault with a dangerous weapon” as explained in Final Instruction No. 2, please mark your verdict.	<p>_____ Not Guilty</p> <p>_____ Guilty</p>
	<p>If you find Frank Long Black Cat not guilty of assault with a dangerous weapon, or if you are unable to reach a decision on Step One, please move to Step Two.</p> <p>If you find Frank Long Black Cat guilty of assault with a dangerous weapon, please skip Step Two and sign and date this verdict form.</p>	
Step Two:	On the lesser-included offense of “simple assault,” as explained in Final Instruction No. 3, please mark your verdict and sign and date this verdict form.	<p>_____ Not Guilty</p> <p>_____ Guilty</p>

Please sign and date this Verdict Form.

Date

Foreperson