

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CODY BEN ZEPHIER,

Defendant.

CR 25-10035-CBK

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Ladies and gentlemen of the jury, it is my duty now to explain the rules of law you must apply to this case.

You as jurors are the sole judges of the facts. But it is your duty to follow the law stated in these instructions, and to apply that law to the facts as you find them from the evidence before you. I also gave you instructions during the trial and you must follow those instructions. It would be a violation of your sworn duty to base your verdicts upon any rules of law other than the ones given you in these instructions, regardless of your personal feelings as to what the law ought to be.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

INSTRUCTION NO. 2

You have been chosen and sworn as jurors to try the issues of fact presented by the allegations of the indictment and the denials made by the defendant in his pleas of “not guilty.” You are to perform this duty without bias or prejudice, because the law does not permit jurors to be governed by sympathy or public opinion. The accused and the public expect that you will carefully and impartially consider all of the evidence and will follow the law as stated by the Court, in order to reach just verdicts, regardless of the consequences to any party.

INSTRUCTION NO. 3

The indictment in this case charges the defendant with the crimes of assault resulting in serious bodily injury, assault resulting in substantial bodily injury to an intimate partner or dating partner, and assault of an intimate partner or dating partner by strangulation or suffocation. The defendant has pleaded not guilty to these charges.

As I told you at the beginning of the trial, the indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Therefore, the defendant, even though charged, begins the trial with no evidence against him. This 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 essential element of the crimes charged.

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

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

INSTRUCTION NO. 4

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 5

I have mentioned the word “evidence.” The evidence in this case consists of the testimony of witnesses, and the documents and other things received as exhibits.

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 and questions that I struck from the record, or told you to disregard, are not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, you were instructed that some evidence was received for a limited purpose only and you must follow that instruction.

INSTRUCTION NO. 6

There are two types of evidence from which you may find the truth as to the facts of a case -- direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

INSTRUCTION NO. 7

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. 8

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of a greater credence. 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.

INSTRUCTION NO. 9

A witness may be discredited or “impeached” by contradictory evidence by a showing that he or she 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 which is inconsistent with the witness’s present testimony.

If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

INSTRUCTION NO. 10

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education, or experience, has become an expert in some field may state opinions on matters in that field and may also state the reasons for those opinions.

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. 11

The crime of assault resulting in serious bodily injury, as charged in Count I of the indictment, has five essential elements, which are:

1. On or about June 27, 2025, the defendant, without just cause or excuse, voluntarily and intentionally assaulted Tatum Sydney Spotted Horse.
2. The assault resulted in serious bodily injury to Tatum Sydney Spotted Horse.
3. The defendant was not acting in self-defense.
4. The defendant is an Indian; and
5. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime charged in Count I of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

If you should unanimously find the defendant “Not Guilty” of the crime of assault resulting in serious bodily injury as charged in Count I of the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count I of the indictment, then you must proceed to determine the guilt or innocence of the defendant as to 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 of assault resulting in serious bodily injury, has four essential elements, which are:

1. On or about June 27, 2025, the defendant, without just cause or excuse, voluntarily and intentionally assaulted Tateum Sydney Spotted Horse by striking, beating, or wounding her.
2. The defendant was not acting in self-defense,
3. The defendant is an Indian; and
4. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime, a lesser included offense of the crime of assault resulting in serious bodily injury as charged in Count I of the indictment, the government must prove all of the essential elements of this lesser included offense beyond a reasonable doubt. Otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 13

The crime of assault resulting in substantial bodily injury to an intimate partner or dating partner, as charged in Count II of the indictment, has six essential elements, which are:

1. On or about June 27, 2025, the defendant, without just cause or excuse, voluntarily and intentionally assaulted Tateum Spotted Horse.
2. The assault resulted in substantial bodily injury to Tatum Spotted Horse.
3. At the time of the assault, Tateum Spotted Horse was an intimate partner or dating partner of the defendant.
4. The defendant was not acting in self-defense.
5. The defendant is an Indian; and
6. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime charged in Count II of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 14

The crime of assault of an intimate partner or dating partner by strangulation or suffocation, as charged in Count III of the indictment, has six essential elements, which are:

1. On or about June 27, 2025, the defendant, without just cause or excuse, voluntarily and intentionally assaulted Tateum Spotted Horse.
2. Defendant committed the assault by means of strangling or suffocating, or by attempting to strangle or suffocate.
3. At the time of the assault, Tateum Spotted Horse was an intimate partner or dating partner of the defendant.
4. The defendant was not acting in self-defense.
5. The defendant is an Indian; and
6. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime charged in Count III of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 15

The term “assault” as used in these instructions 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.

INSTRUCTION NO. 16

The phrase “serious bodily injury” as used in these instructions means bodily 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.

INSTRUCTION NO. 17

The phrase “substantial bodily injury” as used in these instructions means bodily injury which involved temporary but substantial disfigurement or temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty.

INSTRUCTION NO. 18

The phrase “intimate partner” as used in these instructions means a person with whom the defendant has a child, a person who has or does currently cohabituate with the defendant, or a person with whom the defendant has or had a social relationship of a romantic or intimate nature. The existence of a romantic or intimate relationship can be determined by considering the length and type of the relationship and the frequency of interaction between the persons involved in that relationship.

INSTRUCTION NO. 19

The phrase “dating partner” as used in these instructions means a person who is currently or has been in a romantic or intimate relationship with the defendant. The existence of a dating relationship can be determined by considering the length and type of the relationship and the frequency of interaction between the persons involved in that relationship.

INSTRUCTION NO. 20

The term “strangling” as used in these instructions means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or cause protracted injury to the victim.

INSTRUCTION NO. 21

The term “suffocating” as used in these instructions means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or cause protracted injury to the victim.

INSTRUCTION NO. 22

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.

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 a substantial risk of death or great bodily harm.

INSTRUCTION NO. 23

Intent may be proved like anything else. You may consider any statements and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of the defendant's 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. 24

The crime charged in Count III of the indictment includes an attempt to commit the crime in question. The defendant may be found guilty of an attempt if he intended to engage in the activities alleged in Count III of the indictment and he knowingly and intentionally carried out some act which was a substantial step toward the commission of the alleged activity.

INSTRUCTION NO. 25

The indictment charges that the offenses were committed “on or about” a certain date. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged.

INSTRUCTION NO. *26*

The indictment in this case alleges that the defendant is an Indian and that the offenses alleged occurred in Indian country. The existence of those factors is necessary in order for this Court to have jurisdiction over the crimes charged in of the indictment.

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that defendant is an Indian and that the place where the incidents alleged in the indictment 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 place where the offenses alleged in the indictment are claimed to have occurred is in Indian country.

INSTRUCTION NO. 27

Upon retiring to the jury room, you will select one of your members to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

A verdict form has been prepared for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdicts, you will have your foreperson fill in, date, and sign the form to state the verdicts upon which you unanimously agree, and then notify the marshal that you have a verdict.

INSTRUCTION NO. 28

The verdicts must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdicts must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 29

If you have questions, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury.

You will note from the oath about to be taken by the marshal that he, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached unanimous verdicts.

INSTRUCTION NO. 30

It is proper to add a final caution.

Nothing that I have said in these instructions, and nothing that I have said or done during the trial, has been said or done to suggest to you what I think your verdicts should be.

What the verdicts shall be is your exclusive duty and responsibility.