

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. CODY BEN ZEPHIER, Defendant.	CR 1:25-CR-10035-CBK PRELIMINARY JURY INSTRUCTIONS
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PRELIMINARY INSTRUCTION NO. 1

Members of the Jury: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions, both those I give you now and those I give you later, are equally binding on you and must be followed.

This is a criminal case, brought against the defendant, Cody Ben Zephier, by the United States government. The charges are set forth in what is called the “indictment.” You should understand that an indictment is simply an accusation. It is not evidence of anything.

The government charges in Count I of the indictment that, on or about June 27, 2025, in Corson County, in Indian country, in the District of South Dakota, the defendant, Cody Ben Zephier, an Indian, unlawfully assaulted Tateum Sydney Spotted Horse, and said assault resulted in serious bodily injury to Tateum Sydney Spotted Horse, all in violation of 18 U.S.C. §§ 1153 and 113(a)(6).

The government charges in Count II of the indictment that, on or about June 27, 2025, in Corson County, in Indian country, in the District of South Dakota, the defendant, Cody Ben Zephier, an Indian, unlawfully assaulted his intimate partner or dating partner Tateum Spotted Horse, and said assault resulted in substantial bodily injury to Tateum Spotted Horse, all in violation of 18 U.S.C. §§ 1153 and 113(a)(7).

The government charges in Count III of the indictment that, on or about June 27, 2025, in Corson County, in Indian country, in the District of South Dakota, the defendant, Cody Ben Zephier, an Indian, unlawfully assaulted his intimate partner or dating partner Tateum Spotted Horse, by strangulation or suffocation, or attempting to do so, all in violation of 18 U.S.C. §§ 1153 and 113(a)(8).

The defendant has pleaded not guilty to these charges and is presumed to be not guilty unless and until proved guilty beyond a reasonable doubt.

PRELIMINARY INSTRUCTION NO. 2

It will be your duty to decide from the evidence whether the defendant is guilty or not guilty of the crimes charged. In ordinary lay usage, the term “not guilty” is often considered to be synonymous with “innocent.” The news media often confuses these terms. The terms are not synonymous. “Not guilty” is a legal finding by the jury that the prosecution has not met its burden of proof. A “not guilty” verdict can result from either of two states of mind on the part of the jury: that you believe the defendant is factually innocent and did not commit the crime; or, although you do not necessarily believe that the defendant is innocent, and even “tend” to believe he did commit the crime, the prosecution’s case was not sufficiently strong to convince you of the defendant’s guilt beyond a reasonable doubt.

From the evidence, you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdicts. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense, and the law as given to you by the Court.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdicts should be.

Finally, please remember that only this defendant is on trial here, not anyone else, and that this defendant is on trial only for the crimes charged, not for anything else.

PRELIMINARY INSTRUCTION NO. 3

I have mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits, any facts that are stipulated--that is, formally agreed to by the parties, and any facts that are judicially noticed--that is, facts which I say you may, but are not required to, accept as true, even without evidence.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions, and comments by the lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. The lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain any 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 strike from the record, or tell you to disregard, are not evidence and must not be considered by you.
4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when and if that occurs, and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

PRELIMINARY 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 says, or only part of it, or none of it.

In deciding what testimony of any witness to believe, consider the intelligence of the witness, the opportunity the witness had to see or hear the things testified about, the memory of the witness, any motives the witness may have for testifying a certain way, the manner of the witness while testifying, whether the witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with other evidence that you believe.

PRELIMINARY INSTRUCTION NO. 5

At the end of the trial you must make your decisions based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter should not be required to read back lengthy testimony. You must, therefore, pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. The clerk will give you notebooks and pencils if you would like to use them. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you so that you do not hear other answers by the witness.

Your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you do not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony might have been.

When you leave at night, your notes will be secured and not read by anyone. And at the end of this trial, your notes will be shredded and not read by anyone.

PRELIMINARY INSTRUCTION NO. 6

During the trial it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to an absolute minimum.

PRELIMINARY INSTRUCTION NO. 7

To ensure fairness, you as jurors must obey certain rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the trial when you go to the jury room to decide on your verdicts.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom do not let anyone tell you anything about this case, or about anyone involved with it. If someone should try to talk to you about this case, or about any person involved in this case, please report it to me immediately.

Fourth, during the trial you should not talk with or speak to the parties, lawyers, or witnesses involved in this case--you should not even pass the time of day with any of them. It is important not only that you and I do justice in this case, but that we also give the appearance of doing justice. If a person from one side sees you talking to a person from the other side--even if it is simply to pass the time of day--an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator, or the like, it is because they are not supposed to talk to you or visit with you.

Fifth, it may be necessary for you to tell your family, friends, teachers, coworkers, or employer about your participation in this trial. You can explain when you are required to be in court and can warn them not to ask you about this case, tell you anything they know or think they know about this case, or discuss this case in your presence. You must not communicate with anyone or post information about the parties, witnesses, participants, charges, evidence, or anything else related to this case. You must not tell anyone anything about the jury's deliberations in this case until after I accept your verdicts or until I give you specific permission to do so. If you discuss the case with someone other than the other jurors during deliberations, it could create the

perception that you have clearly decided the case or that you may be influenced in your verdict by their opinions. That would not be fair to the parties and it may result in the verdicts being thrown out and the case having to be retried. During the trial, while you are in the courthouse and after you leave for the day, do not provide any information to anyone by any means about this case. Thus, for example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or Website such as Facebook, MySpace, YouTube, or Twitter, or any other way to communicate to anyone any information about this case until I accept your verdicts.

Sixth, do not do any research -- on the Internet, in libraries, in the newspapers, or in any other way -- or make any investigation about this case on your own. Do not visit or view any place discussed in this case and do not use Internet programs or any other device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge.

Seventh, do not read any news stories or articles in print, or on the Internet, or in any blog, about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. In fact, until the trial is over, I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any television or radio newscasts at all. I do not know whether there might be any news reports of this case, but if there are, you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case, you will know what you need to return just verdicts. The parties have a right to have the case decided only on evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we don't know about, then your verdicts may be influenced by inaccurate, incomplete or

misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this country and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt.

Eighth, do not make up your mind during the trial about what the verdicts should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

You must leave your cell phone, PDA, Blackberry, Smartphone, I-phone, I-pad, and any other wireless communication devices in the jury room during the trial and may only use them during breaks. However, you are not allowed to have these devices in the jury room during your deliberations. You may give them to the deputy clerk for safekeeping just before you start to deliberate. It will be returned to you when your deliberations are complete.

PRELIMINARY INSTRUCTION NO. 8

The trial will proceed in the following manner:

First, the government attorney will make an opening statement. Next the defendant's attorney may, but does not have to, make an opening statement. An opening statement is not evidence, but is simply a summary of what that attorney expects the evidence to be.

The government will then present its evidence, and counsel for the defendant may cross-examine the witnesses. Following the government's case, the defendant may, but does not have to, present evidence, testify, or call other witnesses. If the defendant calls witnesses, the government counsel may cross-examine them.

After presentation of the evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. I will then instruct you further on the law. After that, you will retire to deliberate on your verdicts.