

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. PHILIP ANTHONY BATTESE, Defendant.</p>	<p>3:17-CR-30010-RAL FINAL JURY INSTRUCTIONS</p>
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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. The instructions I am about to give you now are in writing and will be available to you in the jury room.

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.

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—that 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.

When you were instructed that evidence was received for a limited purpose, you must follow that instruction.

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 of any witness 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. 5

The indictment in this case charges the defendant with three different crimes. Count I charges the defendant with assaulting, opposing, resisting, and impeding a federal officer. Count II charges the defendant with assault with a dangerous weapon. Count III charges the defendant with carrying, using, or brandishing a firearm during and in relation to a crime of violence. The defendant has pleaded not guilty to each of those charges.

The indictment is simply the document that formally charges the defendant with the crimes for which he is on trial. The indictment is not evidence of anything. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate, with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty. This presumption can be overcome only if the government proved during the trial, beyond a reasonable doubt, each element of a crime charged.

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

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial. Accordingly, the fact that a defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 6

The crime of assaulting, opposing, resisting, and impeding a federal officer, as charged in Count I of the indictment, has four elements, which are:

One, that on or about the 21st day of December, 2016, at Lower Brule, in the District of South Dakota, the defendant, Philip Anthony Battese, forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with Jeffery Jones;

“Forcibly” means by use of force. Physical force is sufficient, but actual physical contact is not required. You may also find that a person who, in fact, has the present ability to inflict bodily harm upon another and who threatens or attempts to inflict bodily harm upon such a person acts forcibly. In such a case, the threat must be a present one.

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 in doing such act or acts, the defendant used a dangerous weapon, a pistol;

“Dangerous weapon,” for purposes of assaulting a federal officer crimes, means an object likely to endanger life or inflict serious bodily harm.

Three, the defendant’s act or acts were done voluntarily and intentionally; and

Four, that at the time of the defendant’s act or acts, Jeffery Jones was employed as a law enforcement officer with the Bureau of Indian Affairs, and was engaged in the performance of his official duties at the time.

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

INSTRUCTION NO. 7

The Court has determined, as a matter of law, that law enforcement officers of the Bureau of Indian Affairs qualify as federal officers for purposes of the offense charged in Count I of the indictment. It is for you to determine if Jeffery Jones is an officer of the Bureau of Indian Affairs, and if he was engaged in the performance of his official duties at the time in question.

“Engaged in the performance of his official duties” simply means acting within the scope of what the person is employed to do. It is not defined by whether the officer is abiding by laws and regulations in effect at the time of the incident. The test is whether the person is acting within that area of responsibility, that is, whether the officer’s actions fall within the agency’s overall mission, in contrast to engaging in a personal frolic of his own.

INSTRUCTION NO. 8

The defendant need not know that the victim was a federal officer at the time of the offense charged in Count I of the indictment.

INSTRUCTION NO. 9

The crime of assault with a dangerous weapon, as charged in Count II of the indictment, has five elements, which are:

One, that on or about the 21st day of December, 2016, the defendant, Philip Anthony Battese, voluntarily and intentionally assaulted Jeffery Jones with a dangerous weapon;

“Assault” means 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 a pistol, that is a Glock 22 pistol, bearing serial number HRS 555, was used and that it is a dangerous weapon;

“Dangerous weapon,” for purposes of the charge of assault with a dangerous weapon, means any object capable of being readily used by one person to inflict bodily injury upon another person.

Three, that the defendant had the specific intent to do bodily harm to Jeffery Jones;

Four, that the defendant is an Indian; and

Five, that the offense took place in Indian country.

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

INSTRUCTION NO. 10

The crime of carrying, brandishing, or using a firearm during and in relation to a crime of violence, as charged in Count III of the indictment, has three essential elements, which are:

One, that the defendant, Philip Anthony Battese, committed both, or either, the crime of assaulting, resisting, and impeding a federal officer as charged in Count I of the indictment or the crime of assault with a dangerous weapon as charged in Count II of the indictment;

Two, that the defendant knowingly carried, brandished, or used a firearm during and in relation to that crime; and

Three, that the firearm was a Glock Model 22 pistol, bearing serial number HRS 555.

You may find that a firearm was “carried” during the commission of assaulting, resisting, and impeding a federal officer or assault with a dangerous weapon if you find that the defendant had a firearm on his person or readily accessible to him in a vehicle.

The term “brandish” means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

The phrase “used a firearm” means that the firearm was actively employed in the course of the commission of assaulting, resisting, and impeding a federal officer or assault with a dangerous weapon. You may find that a firearm was used during the commission of assaulting, resisting, or impeding a federal officer or assault with a dangerous weapon if you find that it was brandished or displayed.

You must first consider the evidence pertaining to Counts I and II of the indictment and determine whether the government has proved either of those counts beyond a reasonable doubt. If you reach a verdict of guilty on assaulting, resisting, and impeding a federal officer as charged in Count I or assault with a dangerous weapon as charged in Count II, only then may you consider this charge. If your verdict was not guilty on Count I and II, you must return a verdict of not guilty on this charge.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find him guilty of the crime charged; otherwise you must find him not guilty of this crime. If you find the defendant guilty of this crime, you must indicate on the verdict form whether you found that the firearm was carried, brandished, and/or used.

INSTRUCTION NO. 11

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 the 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.

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his actions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 12

Count II of the indictment in this case alleges that the defendant Philip Anthony Battese is an Indian and that the crime alleged in Count II occurred in Indian country. The existence of those two factors is necessary in order for this Court to have jurisdiction over Count II as charged in the indictment.

Counsel for the government, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that the place where Count II is 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 Count II is claimed to have occurred is in Indian country.

INSTRUCTION NO. 13

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. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 14

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 court security officer, 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, Snapchat, LinkedIn, Instagram, YouTube, My Space 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. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, 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 court security officer that you are ready to return to the courtroom.

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<p>UNITED STATES OF AMERICA, Plaintiff, vs. PHILIP ANTHONY BATTESE, Defendant.</p>	<p>3:17-CR-30010-RAL VERDICT FORM</p>
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find the defendant Philip Anthony Battese, _____ (fill in either “not guilty” or “guilty”) of assaulting, opposing, resisting, and impeding a federal officer as charged in Count I of the indictment.

2. We find the defendant Philip Anthony Battese, _____ (fill in either “not guilty” or “guilty”) of assault with a dangerous weapon as charged in Count II of the indictment.

(Complete 3. if and only if you found the defendant “guilty” of either Count I or Count II or both.)

3. We find the defendant Philip Anthony Battese, _____ (fill in either “not guilty” or “guilty”) of carrying, brandishing, or using a firearm during and in relation to a crime of violence as charged in Count III of the indictment.

(Complete 3.A. if and only if you find the defendant “guilty” of carrying, brandishing, or using a firearm during and in relation to a crime of violence as charged in Count III of the indictment.)

3.A. We find, beyond a reasonable doubt, that the defendant, Philip Anthony Battese: (place an “X” or check mark in the space provided next to the word or words that you find apply, using the beyond a reasonable doubt standard)

_____ carried

_____ brandished

_____ used

a firearm during and in relation to the crimes charged in Count I or Count II or both.

Dated June ____, 2017

Foreperson