

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JARED BOURLAND,

Defendant.

3:17-CR-30153-RAL

FINAL JURY INSTRUCTIONS

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.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 5

The indictment in this case charges the defendant with three different crimes. The defendant is charged with one count of assault by strangulation, one count of assault with a dangerous weapon, and one count of brandishing a firearm during and in relation to a crime of violence. The defendant has pleaded not guilty to these 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 United States proved during the trial, beyond a reasonable doubt, each element of the crimes charged.

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

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the United States throughout the trial.

INSTRUCTION NO. 6

The crime of assault by strangulation, as charged in Count I of the indictment, has five elements, which are:

One, that on or about the 28th day of December, 2016, the defendant, Jared Bourland, voluntarily and intentionally assaulted Jacqueline Bourland (now known as Jacqueline Buffalo), or attempted to do so;

“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.

Two, that the defendant committed that assault by means of strangling her;

“Strangling” 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.

Three, that Jacqueline Bourland (now known as Jacqueline Buffalo) was the spouse of Jared Bourland;

Four, that the defendant is an Indian; and

Five, that the alleged offense took place in Indian county.

If you find unanimously that the government has proved these five elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime. Otherwise, you must find the defendant not guilty of this offense.

INSTRUCTION NO. 7

If your verdict under Count I of the indictment charging assault by strangulation is unanimously not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on Count I, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of assault by striking, beating, or wounding. The crime of assault by striking, beating, or wounding of an individual is a lesser-included offense of the crime in Count I of assault by strangulation. Assault by striking, beating, or wounding has three elements, which are:

One, on or about December 28, 2016, the defendant, Jared Bourland, voluntarily and intentionally assaulted Jacqueline Bourland (now known as Jacqueline Buffalo) by means of striking, beating, or wounding;

The same definition of “assault” in Instruction No. 6 applies.

Two, the defendant is an Indian; and

Three, the offense took place in Indian country.

For you to find the defendant guilty of assault by striking, beating, or wounding, which is the lesser-included offense of the crime alleged under Count I of the indictment, the government must prove all of these elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 8

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 29th day of December, 2016, the defendant, Jared Bourland, voluntarily and intentionally assaulted Jacqueline Bourland (now known as Jacqueline Buffalo);

The same definition of “assault” in Instruction No. 6 applies.

Two, that the defendant used a dangerous weapon, that is shod feet, in the assault;

“Dangerous weapon” means any object capable of being readily used by one person to inflict bodily injury upon another person. A shod foot may qualify as a dangerous weapon if voluntarily and intentionally used in a manner to inflict bodily injury upon another person.

Three, that the assault was committed on Jacqueline Bourland (now known as Jacqueline Buffalo) with the specific intent to do bodily harm;

Four, that the defendant is an Indian; and

Five, that the alleged offense took place in Indian county.

If you find unanimously that the government has proved these five elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime. Otherwise, you must find the defendant not guilty of this offense.

INSTRUCTION NO. 9

If your verdict under Count II of the indictment charging assault with a dangerous weapon is unanimously not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on Count II, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of simple assault. The crime of simple assault of an individual is a lesser-included offense of the crime in Count II of assault with a dangerous weapon. Simple assault has three elements, which are:

One, on or about December 29, 2016, the defendant, Jared Bourland, voluntarily and intentionally engaged in a simple assault of Jacqueline Bourland (now known as Jacqueline Buffalo);

A “simple assault” is any intentional or knowing harmful or offensive bodily touching or contact, however slight, without justification or excuse, with another’s person, regardless of whether physical harm is intended or inflicted. It is not necessary that the person have a reasonable apprehension of bodily harm.

Two, the defendant is an Indian; and

Three, the offense took place in Indian country.

For you to find the defendant guilty of simple assault, which is the lesser-included offense of the crime alleged under Count II of the indictment, the government must prove all of these elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 10

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

***One*, that the defendant, Jared Bourland, committed the crime of assault with a dangerous weapon as charged in Count II of the indictment; and**

***Two*, that the defendant knowingly brandished a firearm during and in relation to that crime.**

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.

You must first consider the evidence pertaining to Count II of the indictment and determine whether the government has proved that count beyond a reasonable doubt. If you reach a verdict of guilty on 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 II, you must return a verdict of not guilty on this charge.

If you find unanimously that the government has proved these two elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime. Otherwise, you must find the defendant not guilty of this offense.

INSTRUCTION NO. 11

If your verdict under Count III of the indictment charging brandishing a firearm during and in relation to a crime of violence is unanimously not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on Count III, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of using, carrying, or possessing a firearm during and in relation to a crime of violence. The crime of using, carrying, or possessing a firearm during and in relation to a crime of violence is a lesser-included offense of the crime in Count III of brandishing a firearm during and in relation to a crime of violence. Using, carrying, or possessing a firearm during and in relation to a crime of violence has two elements, which are:

One, that the defendant, Jared Bourland, committed the crime of assault with a dangerous weapon as charged in Count II of the indictment; and

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

For you to find the defendant guilty of using, carrying, or possessing a firearm during and in relation to a crime of violence, which is the lesser-included offense of the crime alleged under Count III of the indictment, the government must prove all of these elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

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 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.

The government is not required to prove that the defendant knew that his actions were unlawful. An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. 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. 13

You have heard testimony from a person described as an expert. A person who, by knowledge, skill, training, education, or experience, has become an expert in some field may state his or her opinion on matters in that field and may also state the reasons for his or her 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' 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. 14

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. 15

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 United States 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, Instagram, YouTube, 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.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JARED BOURLAND, Defendant.	3:17-CR-30153-RAL VERDICT FORM
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find Defendant Jared Bourland _____ (fill in either “guilty” or “not guilty”) of the crime of assault by strangulation as charged in Count I of the indictment.

1.A. If, and only if, you find the defendant not guilty of the crime of assault by strangulation as charged in Count I of the indictment, you must then consider whether the defendant committed the offense of assault by striking, beating, or wounding.

We find Defendant Jared Bourland _____ (fill in either “guilty” or “not guilty”) of the lesser included offense of assault by striking, beating, or wounding.

2. We find Defendant Jared Bourland _____ (fill in either “guilty” or “not guilty”) of the crime of assault with a dangerous weapon as charged in Count II of the indictment.

2.A. If, and only if, you find the defendant not guilty of the crime of assault with a dangerous weapon as charged in Count II of the indictment, you must then consider whether the defendant committed the offense of simple assault.

We find Defendant Jared Bourland _____ (fill in either “guilty” or “not guilty”) of the lesser included offense of simple assault.

3. (Answer if, and only if, you find defendant “guilty” on Count II and filled in “guilty” in the line of number 2. above. If your verdict was “not guilty” on Count II, then your verdict must be “not guilty” on both 3. and 3.A.) We find Defendant Jared Bourland _____ (fill in either “guilty” or “not guilty”) of the crime of brandishing a firearm during and in relation to a crime of violence as charged in Count III of the indictment.

3.A. If, and only if, you find the defendant guilty on Count II yet not guilty of the crime of brandishing a firearm during and in relation to a crime of violence as charged in Count III of the indictment, you must then consider whether the defendant committed the offense of using, carrying, or possessing a firearm during and in relation to a crime of violence.

We find Defendant Jared Bourland _____ (fill in either “guilty” or “not guilty”) of the lesser included offense of using, carrying, or possessing a firearm during and in relation to a crime of violence.

Dated May ____, 2019

Foreperson