

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSHUA HEIDEMAN,

Defendant.

3:20-CR-30074-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. You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

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 one crime. The defendant is charged with assault with a dangerous weapon. The defendant has pleaded not guilty to this charge and maintains that he acted in self-defense.

The indictment is simply the document that formally charges the defendant with the crime 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 crime charged.

Please remember that only the defendant, not anyone else, is on trial here, and that the defendant is on trial only for the crime 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 with a dangerous weapon, as charged in the indictment, has five elements, which are:

***One*, that on or about the 20th day of May, 2020, the defendant, Joshua Heideman, assaulted Bentley In The Woods with the specific intent to cause bodily harm;**

***Two*, that the defendant used a dangerous weapon, that is a bar, in the assault;**

***Three*, that the defendant is an Indian;**

***Four*, that the alleged offense took place in Indian country; and**

***Five*, the defendant did not act in self-defense.**

If you find unanimously that the government has proved these four elements beyond a reasonable doubt as to the defendant, and if it has further been proved beyond a reasonable doubt that the defendant was not acting in self-defense as defined in Instruction No. 11, 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 on the crime of 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 offense charged in the indictment, 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 under this instruction. The crime of simple assault, a lesser included offense to assault with a dangerous weapon as it is charged in the indictment, has four elements, which are:

One, that on or about the 20th day of May, 2020, the defendant, Joshua Heideman, assaulted Bentley In The Woods;

Two, that the defendant is an Indian;

Three, that the alleged offense took place in Indian country; and

Four, the defendant did not act in self-defense.

For you to find the defendant guilty of this crime, a lesser included offense to the offense charged in the indictment, the government must prove all four elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 8

“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.

INSTRUCTION NO. 9

The phrase “dangerous weapon” as used in these instructions means an object with the capacity to endanger life or inflict bodily harm and used in a manner likely to do so.

INSTRUCTION NO. 10

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.

INSTRUCTION NO. 11

If a person reasonably believes force is necessary to protect himself from what he reasonably believes to be unlawful physical harm about to be inflicted by another and uses that force, then he acted in self-defense. If a person acts in self-defense, he is not guilty of the charged offense.

However, self-defense which involves the use of force likely to cause death or great bodily harm is justified only if the person reasonably believes the force is necessary to protect himself from what he reasonably believes to be a substantial risk of death or great bodily harm.

INSTRUCTION NO. 12

You may also consider any evidence of flight by the defendant, along with all of the evidence in the case, and you may consider whether this evidence shows a consciousness of guilt and determine the significance to be attached to any such conduct.

Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to any such evidence are matters exclusively within the province of the jury. In your consideration of evidence of flight, you should consider that there may be reasons for this which are fully consistent with innocence.

INSTRUCTION NO. 13

You have heard testimony that certain witnesses may have made statements at an earlier time that are inconsistent with their testimony at trial. If you find that such prior inconsistent statements were indeed made, you may consider the witness's prior inconsistent statements to evaluate the credibility of the witness, but may not consider the prior inconsistent statement as proof of the matter asserted.

INSTRUCTION NO. 14

Officer Lafferty made comments on the body camera video regarding the defendant's past criminal history and alleged calls concerning the defendant. Officer Lafferty's statements must be disregarded in their entirety.

INSTRUCTION NO. 15

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. 16

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.

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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 Joshua Heideman _____ (fill in either "guilty" or "not guilty") of the crime of assault with a dangerous weapon as charged in the indictment.

[Skip if you find the defendant "guilty" in Part 1 above.] If you find that the defendant is "not guilty" of assault with a dangerous weapon as charged in the indictment, or if you are unable to reach a verdict on the offense charged in the indictment after all reasonable efforts, then you must answer the following:

- a. We find the Defendant Joshua Heideman _____ (fill in either "guilty" or "not guilty") of the crime of simple assault under Instruction No. 7.

Dated March ____, 2021

Foreperson