

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. JAMES DRAPEAU, Defendant.</p>	<p>3:22-CR-30062-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.

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.

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 superseding indictment in this case charges two different crimes. James Drapeau is charged with one count of Assault with a Dangerous Weapon and one count of Child Abuse. The Defendant has pleaded not guilty to these charges.

The superseding indictment is simply the document that formally charges the Defendant with the crimes for which he is on trial. The superseding 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.

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 the Defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial. 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.

INSTRUCTION NO. 6

The crime of Assault with a Dangerous Weapon, as charged in Count I of the superseding indictment, has four essential elements, which are:

One, that on or about the 24th day of May, 2022, the Defendant, James Drapeau, assaulted [Name Redacted] with the specific intent to cause bodily harm;

“Bodily harm” means an injury that is painful and obvious or is of a type for which medical attention would ordinarily be sought, including (A) a cut, abrasion, bruise, burn, or disfigurement; (B) physical pain; (C) illness; (D) impairment of the function of a bodily member, organ, or mental faculty; or (E) any other injury to the body, no matter how temporary.

Two, that the Defendant used a dangerous weapon, specifically a broomstick;

“Dangerous weapon” means an object with the capacity to inflict bodily harm and used in a manner likely to do so.

Three, the assault occurred in Indian country; and

Four, the Defendant is an Indian.

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

In the crime of Assault with a Dangerous Weapon, as charged in Count I of the superseding indictment, there must exist in the mind of the perpetrator the specific intent to do bodily harm to the alleged victim. If the Defendant acted without such specific intent, the crime of Assault with a Dangerous Weapon has not been committed. Specific intent to do bodily harm is not an element of the crime of child abuse as charged in Count II of the superseding indictment.

INSTRUCTION NO. 8

If you should unanimously find the Defendant “Not Guilty” of the crime of Assault with a Dangerous Weapon; or if after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count I of the superseding indictment, then you must proceed to determine whether the Defendant is guilty or not guilty of the lesser included offense of Simple Assault under this instruction. If you found the Defendant guilty of Count I as charged in the superseding indictment, then skip this instruction.

The crime of Simple Assault, the lesser included offense of the crime charged in Count I of the superseding indictment, has three essential elements, which are:

***One*, that on or about the 24th day of May, 2022, in Buffalo County, in the District of South Dakota, James Drapeau, did assault [Name Redacted];**

***Two*, that James Drapeau is an Indian; and**

***Three*, that the alleged offense occurred 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 of Simple Assault; otherwise, you must find the Defendant not guilty of this crime.

INSTRUCTION NO. 9

“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. 10

The crime of Child Abuse, as charged in Count II of the superseding indictment, has five essential elements, which are:

One, that on or about the 24th day of May, 2022, the Defendant, James Drapeau, abused, exposed, tortured, tormented, or cruelly punished [Name Redacted];

The term “abuse” means physical maltreatment;

The term “expose” means to place in a position where the child is open to foreseeable harm;

The term “torture” means to cause intense suffering to or to punish or coerce by inflicting excruciating pain;

The term “torment” means to cause severe and unusually persistent or recurrent distress of body or mind; and

The term “cruelly punish” means to punish in such a way as to intentionally inflict physical suffering with reckless indifference to pain.

Two, that the Defendant committed such act without just cause;

Three, [Name Redacted] was under 18 years of age;

Four, that the Defendant is an Indian; and

Five, that the offense was committed 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. 11

Any person who abuses, exposes, tortures, torments, or cruelly punishes a minor is guilty of a crime.

If you find that the Defendant used reasonable force against [Name Redacted] for restraint or correction, then you must find the Defendant not guilty of Child Abuse as charged in Count II of the superseding indictment.

The use of force against a child is not unlawful if committed by a parent, an authorized agent of any parent, or by any guardian, in the exercise of a lawful authority to restrain or correct the child and if restraint or correction has been rendered necessary by the misconduct of the child, or by the child's refusal to obey the lawful command of such parent or an authorized agent or guardian, and the force used is reasonable in manner and moderate in degree.

INSTRUCTION NO. 12

Intent 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 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.

In the crime of child abuse, the Defendant must have criminal intent. To constitute criminal intent, it is not necessary that there should exist an intent to violate the law. When a person intentionally does an act which the law declares to be a crime, the person is acting with criminal intent, even though the person may not know that the conduct is unlawful.

INSTRUCTION NO. 13

The superseding indictment in this case alleges that the Defendant is an Indian and that the alleged offense occurred in Indian country. The existence of those two factors is necessary in order for this Court to have jurisdiction over the crime charged in the superseding indictment.

Counsel for the United States, counsel for the Defendant, and the Defendant have agreed or stipulated that the Defendant is an Indian and that the place where the alleged incident is claimed to have occurred is in Indian country.

The Defendant has not, by entering this agreement or stipulation, admitted his guilt of the offense 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 alleged offense is claimed to have occurred is in Indian country.

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, smart phone, 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

<p>UNITED STATES OF AMERICA, Plaintiff, vs. JAMES DRAPEAU, Defendant.</p>	<p>3:22-CR-30062-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 James Drapeau, _____ (fill in either “not guilty” or “guilty”) of Assault with a Dangerous Weapon as charged in Count I of the superseding indictment.

If and only if, you found the Defendant “not guilty” or you are not able to reach a verdict after all reasonable efforts as to question 1, proceed to question 2. If you found the Defendant “Guilty” under question 1, then proceed to question 3.

2. We find the Defendant James Drapeau, _____ (fill in either “not guilty” or “guilty”) of the lesser included offense of Simple Assault.
3. We find the Defendant James Drapeau, _____ (fill in either “not guilty” or “guilty”) of Child Abuse as charged in Count II of the superseding indictment.

Dated April ____, 2023

Foreperson