

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

| | |
|--|---|
| <p>UNITED STATES OF AMERICA, Plaintiff, vs. BARBARA MCGHEE, Defendant.</p> | <p>3:21-CR-30038-RAL FINAL JURY INSTRUCTIONS</p> |
|--|---|

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 would 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 count of Assaulting, Opposing, Resisting, or Impeding a Federal Officer through physical contact. The defendant has pleaded not guilty to this charge.

The indictment is simply the document that formally charges the defendant with the crime for which she 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 her. 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 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 crime charged, not for anything else.

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

INSTRUCTION NO. 6

The crime of Assaulting, Opposing, Resisting, and Impeding a Federal Officer through physical contact, as charged in the indictment, has four elements, which are:

***One*, that on or about the 29th day of March, 2021, in Lyman County, in the District of South Dakota, the defendant, Barbara McGhee, forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with a federal officer, namely, Bureau of Indian Affairs Correctional Officers Gunner Owen or Samuel Leonard, Jr. or both of them;**

***Two*, that the defendant's act or acts were done voluntarily and intentionally;**

***Three*, that the defendant's act or acts involved physical contact with one or both of the correctional officers; and**

***Four*, that at the time of the defendant's act or acts, Correctional Officers Gunner Owen and Samuel Leonard, Jr. were employed as law enforcement officers with the Bureau of Indian Affairs, and were engaged in the performance of their 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 her guilty of the crime charged; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 7

As used in these instructions:

“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.

To “resist” means to exert force in opposition; to exert oneself so as to counteract or defeat; to withstand the force or effect of.

To “oppose” means to offer resistance to.

To “impede” means to interfere with or slow the progress of.

To “interfere” means to interpose in a way that hinders or impedes.

To “intimidate” means to make timid or fearful; to compel or deter by or as if by threats.

INSTRUCTION NO. 8

Law enforcement officers working for the United States Department of Interior Bureau of Indian Affairs are federal officers for purposes of the offense charged in the indictment.

The parties have stipulated that on March 29, 2021, Gunner Owen and Samuel Leonard, Jr., were employed as such federal officers and were working in that capacity during the time in question. By entering into this stipulation, the defendant has not conceded her guilt, but simply has agreed to these facts.

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

INSTRUCTION NO. 9

If you should unanimously find the defendant “Not Guilty” of the crime of Assaulting, Opposing, Resisting, or Impeding a Federal Officer through physical contact; or if after all reasonable efforts, you are unable to reach a verdict as to the crime charged in the indictment, then you must proceed to determine whether the defendant is guilty or not guilty of the lesser included offense of Simple Assault of a Federal Officer under this instruction. If you found the defendant guilty of the crime charged in the indictment, then skip this instruction.

The crime of Simple Assault of a Federal Officer, the lesser included offense of the crime charged in the indictment, has four essential elements, which are:

***One*, that on or about the 29th day of March, 2021, in Lyman County, in the District of South Dakota, the defendant, Barbara McGhee, forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with a federal officer, namely, Bureau of Indian Affairs Correctional Officers Gunner Owen or Samuel Leonard, Jr., or both of them;**

***Two*, that the defendant’s act or acts were done voluntarily and intentionally;**

***Three*, that the defendant’s act or acts did not involve voluntary and intentional physical contact with one or both of the correctional officers; and**

***Four*, that at the time of the defendant’s act or acts, Correctional Officers Gunner Owen and Samuel Leonard, Jr. were employed as law enforcement officers with the Bureau of Indian Affairs, and were engaged in the performance of their 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 her guilty of the crime of Simple Assault of a Federal Officer; otherwise you must find the defendant not guilty of this crime.

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 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 her 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. 11

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. 12

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. BARBARA MCGHEE, Defendant.</p> | <p>3:21-CR-30038-RAL VERDICT FORM</p> |
|--|--|

We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find the defendant Barbara McGhee, _____ (fill in either “not guilty” or “guilty”) of Assaulting, Opposing, Resisting, and Impeding a Federal Officer through physical contact as charged in Count I of the 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 the case is concluded. Please have the Foreperson sign and date the Verdict Form and notify the court services officer.

2. We find Defendant Barbara McGhee, _____ (fill in either “not guilty” or “guilty”) of the lesser included offense of Simple Assault of a Federal Officer.

Dated February ____, 2023

Foreperson