

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

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<p>UNITED STATES OF AMERICA,  Plaintiff,  vs.  PHILLIP MOUND,  Defendant.</p>	<p>3:16-CR-30169-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.

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

INSTRUCTION NO. 5

You have heard testimony from a person described as an expert. A person who, by knowledge, skill, training, education, or experience, has become 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 opinion.

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's 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. 6

The indictment in this case charges the defendant with three different crimes. Count I charges the defendant with assault with a dangerous weapon. Count II charges the defendant with assault resulting in serious bodily injury. Count III charges the defendant with assault resulting in substantial bodily injury to an intimate partner. 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.

INSTRUCTION NO. 7

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

***One, that on or about the 18th day of October, 2016, the defendant, Phillip Mound, voluntarily and intentionally assaulted Cha'e LeClaire;***

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

“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 injury to Cha'e LeClaire;***

***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. 8

If you should unanimously find the defendant “Not Guilty” of the crime of assault with a dangerous weapon as charged in Count I of the indictment, or if, after reasonable efforts, you are unable to reach a verdict as to the crime charged in Count I of the indictment, then you must proceed to determine whether the defendant is guilty or not guilty as to the crime of simple assault under this instruction.

The crime of simple assault, a lesser included offense of the crime of assault with a dangerous weapon as charged in Count I of the indictment, has three essential elements, which are:

***One, that on or about the 18th day of October, 2016, the defendant, Phillip Mound, voluntarily and intentionally engaged in a simple assault of Cha’e LeCaire;***

“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, that the defendant is an Indian; and***

***Three, 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 of simple assault; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 9

The crime of assault resulting in serious bodily injury as charged in Count II of the indictment has four elements, which are:

***One, that on or about the 18th day of October, 2016, the defendant, Phillip Mound, voluntarily and intentionally assaulted Cha'e LeClaire;***

***Two, that the assault resulted in serious bodily injury;***

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

***Four, 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 Assault Resulting in Substantial Bodily Injury to an Intimate Partner, as charged in Count III of the indictment, has five elements, which are:

***One*, that on or about the 18th day of October, 2016, the defendant, Phillip Mound, voluntarily and intentionally assaulted Cha'e LeClaire;**

***Two*, that as a result, Cha'e LeClaire suffered substantial bodily injury;**

***Three*, that Cha'e LeClaire was an intimate partner or dating partner of the defendant;**

***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 the defendant guilty of the crime charged; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 11

The term “intimate partner” as used in Instruction No. 10 means:

1. A spouse or former spouse of the defendant, a person who shares a child in common with the defendant, or a person who cohabitates or has cohabitated as a spouse with the defendant; or
2. A person who is or has been in a social relationship of a romantic or intimate nature with the defendant, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; or
3. Any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the alleged victim resides.

INSTRUCTION NO. 12

The term “dating partner” as used in Instruction No. 10 means a person who is or has been in a social relationship of a romantic or intimate nature with the Defendant. The existence of such a relationship is based on the consideration of:

1. The length of the relationship; and
2. The type of the relationship; and
3. The frequency of interaction between the persons involved in the relationship.

INSTRUCTION NO. 13

If you should unanimously find the defendant “Not Guilty,” of the crime of assault resulting in substantial bodily injury to an intimate partner as charged in Count III of the indictment, or if, after reasonable efforts, you are unable to reach a verdict as to the crime charged in Count III of the indictment, then you must proceed to determine whether the defendant is guilty or not guilty as to the crime of assault by striking, beating, or wounding under this Instruction.

The crime of assault by striking, beating, or wounding, a lesser included offense of the crime of assault resulting in substantial bodily injury to an intimate partner as charged in Count III of the indictment, has three essential elements, which are:

***One, that on or about the 18th day of October, 2016, the defendant, Philip Mound, voluntarily and intentionally assaulted Cha’e LeClaire by striking, beating, or wounding her;***

***Two, that the defendant is an Indian; and***

***Three, 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 the defendant guilty of the crime of assault by striking, beating, or wounding; otherwise you must find the defendant not guilty of this crime

INSTRUCTION NO. 14

The term “bodily injury” as used in Instruction No. 7 means (1) a cut, abrasion, bruise, burn, or disfigurement; or (2) physical pain; or (3) illness; or (4) impairment of the function of a bodily member, organ, or mental faculty; or (5) any other injury to the body, no matter how temporary.

The term “serious bodily injury” as used in Instruction No. 9 means bodily injury that involves (1) a substantial risk of death; or (2) extreme physical pain; or (3) protracted and obvious disfigurement; or (4) protracted loss or impairment of the function of a bodily member, organ or mental faculty.

The term “substantial bodily injury” as used in Instruction No. 10 means bodily injury which involves a temporary but substantial disfigurement or a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty.

INSTRUCTION NO. 15

In the crime of assault with a dangerous weapon, as charged in Count I of the 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. There is no specific-intent requirement for the crimes of assault resulting in serious bodily injury as charged in Count II and assault resulting in substantial bodily injury to an intimate partner as charged in Count III.

Counts II and III are general intent crimes that do not require proof of the specific intent to do bodily harm. Counts II and III require the government to prove that the defendant's act was voluntary and intentional.



INSTRUCTION NO. 16

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. 17

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

INSTRUCTION NO. 18

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. 19

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, 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.  PHILLIP MOUND,  Defendant.</p>	<p>3:16-CR-30169-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 Phillip Mound, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of assault with a dangerous weapon as charged in Count I of the indictment.
  - 1A. ***Answer if, and only if, you found the defendant “not guilty” as to assault with a dangerous weapon in Part I of this form, or if, after reasonable efforts, you are unable to reach a verdict as to assault with a dangerous weapon. If you found the defendant “guilty” on Part 1, then leave this Part 1A blank.***  
We find the defendant Phillip Mound, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of the lesser included offense of simple assault.
2. We find the defendant Phillip Mound, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of assault resulting in serious bodily injury as charged in Count II of the indictment.
3. We find the defendant Phillip Mound, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of assault resulting in substantial bodily injury to an intimate partner as charged in Count III of the indictment.
  - 3A. ***Answer if, and only if, you found the defendant “not guilty” as to assault resulting in substantial bodily injury to an intimate partner in Part 3 of this form, or if, after reasonable efforts, you are unable to reach a verdict as to assault resulting in substantial bodily injury to an intimate partner. If you found the defendant “guilty” on Part 3, then leave this Part 3A blank.***  
We find the defendant Phillip Mound, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of the lesser included offense of assault by striking, beating, or wounding.

Dated November \_\_\_\_, 2017

\_\_\_\_\_  
Foreperson