

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

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<p>UNITED STATES OF AMERICA,                                  Plaintiff,                                  vs.  LUCIAN RISING SUN, a/k/a Sonny Rising Sun,                                  Defendant.</p>	<p><b>3:20-CR-30040-RAL</b></p>  <p><b>FINAL JURY INSTRUCTIONS</b></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.

INSTRUCTION NO. 5

The indictment in this case charges the defendant with one crime. The defendant is charged with one count of assault resulting in serious bodily injury. 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 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. 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 resulting in serious bodily injury, as charged in the indictment, has four elements, which are:

***One*, that on or about the 29th day of January, 2020, the defendant, Lucian Rising Sun, voluntarily and intentionally assaulted Krystan Circle Eagle;**

***Two*, that the assault resulted in serious bodily injury to Krystan Circle Eagle;**

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

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

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. 7, 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 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 such 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. 8

“Serious bodily injury” as used in these instructions means bodily injury which involves one or more of the following: 1) substantial risk of death; or 2) extreme physical pain; or 3) protracted and obvious disfigurement; or 4) protracted loss or impairment of the functions of a bodily member, organ or mental faculty.

INSTRUCTION NO. 9

Only if you unanimously find the defendant “Not Guilty” of assault resulting in serious bodily injury or if after reasonable efforts you are unable to determine the guilt or innocence of the defendant as to the crime of assault resulting in serious bodily injury should you consider this instruction.

The crime of assault by striking, beating, or wounding is a lesser included offense of assault resulting in serious bodily injury as charged in the indictment. The crime of assault by striking, beating, or wounding, has four elements, which are:

***One, on or about the 29th day of January, 2020, the defendant, Lucian Rising Sun, assaulted Krystan Circle Eagle by means of striking, beating, or wounding;***

***Two, the assault happened in Indian country;***

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

***Four, the defendant did not act in self-defense or defense of another person.***

“Assault” for purposes of this crime means any intentional and voluntary harmful and offensive touching of another person without justification or excuse.

If you find unanimously that the government has proved these four 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. 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.

INSTRUCTION NO. 11

You have heard evidence that the defendant may have committed a prior assault in North Dakota. You may consider this evidence only if you find it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable. This is a lower standard than proof beyond a reasonable doubt.

If you find this evidence has been proved, then you may consider it to help you decide the defendant's intent on January 29, 2020. You should give evidence regarding the North Dakota incident the weight and value you believe it is entitled to receive. If you find that this evidence has not been proved, you must disregard it.

Remember, even if you find that the defendant may have committed a similar act in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed a similar act in the past. The defendant is on trial only for the crime charged, and you may consider the evidence of prior acts only on the issue of defendant's intent on January 29, 2020.

INSTRUCTION NO. 12

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 you may not consider the prior inconsistent statement as proof of the matter asserted. Thus, such prior inconsistent statements as what Ms. Four Bear and Mr. Uses the Knife made on the body camera video, for instance, can be considered to evaluate their credibility and to explain the officer's actions in responding, but not for the proof of the matters asserted.

INSTRUCTION NO. 13

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. 14

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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<p>UNITED STATES OF AMERICA,  Plaintiff,  vs.  LUCIAN RISING SUN, a/k/a Sonny Rising Sun,  Defendant.</p>	<p><b>3:20-CR-30040-RAL</b>  <b>VERDICT FORM</b></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 Defendant Lucian Rising Sun, a/k/a Sonny Rising Sun \_\_\_\_\_ (fill in either “guilty” or “not guilty”) of the crime of assault resulting in serious bodily injury as charged in the indictment.

If and only if you found the Defendant Lucian Rising Sun, a/k/a Sonny Rising Sun, “not guilty” of the charge in the indictment or after all reasonable efforts, could not reach a verdict on the charge in the indictment:

- 1A. We find Defendant Lucian Rising Sun, a/k/a Sonny Rising Sun, \_\_\_\_\_ (fill in either “guilty” or “not guilty”) of the lesser included offense of assault by striking, beating, or wounding.

Dated July \_\_\_\_, 2020

\_\_\_\_\_  
Foreperson