

**UNITED STATES DISTRICT COURT**

**DISTRICT OF SOUTH DAKOTA**

**WESTERN DIVISION**

UNITED STATES OF AMERICA,  Plaintiff,  vs.  CHARLES SCHRADER,  Defendant.	5:20-CR-50152-KES  <b>FINAL INSTRUCTIONS TO THE JURY</b>
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**VERDICT FORM**

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 – ASSAULT WITH A DANGEROUS WEAPON

For you to find Charles Schrader guilty of the offense of assault with a dangerous weapon, as charged in Count 1 of the Second Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

**One, that on or about November 10, 2020, Schrader assaulted Angelo Morales with the specific intent to cause bodily harm;**

“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.

Intent may be proven like anything else. You may consider any statements made or 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.

**Two, that Schrader used a dangerous weapon, specifically a firearm;**

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

**Three, that the assault took place in Indian Country in the District of South Dakota;**

You are instructed that the government and the defendant have agreed that the alleged assault occurred in Indian country in the District of South Dakota.

The defendant has not, by entering into this agreement, 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 present to the jury the fact that the alleged assault took place in Indian country.

**And four, that Schrader is an Indian.**

You are instructed that the government and the defendant have agreed that the defendant is an Indian.

The defendant has not, by entering into this agreement, 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 present to the jury the fact that Schrader is an Indian.

For you to find Schrader guilty of the offense charged in Count 1 of the Second Superseding Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find Schrader not guilty of the offense charged in Count 1 of the Second Superseding Indictment.

FINAL INSTRUCTION NO. 3 – ASSAULT RESULTING IN SERIOUS BODILY  
INJURY

For you to find Charles Schrader guilty of the offense of assault resulting in serious bodily injury as charged in Count 2 of the Second Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

**One, that on or about November 10, 2020, Charles Schrader assaulted Angelo Morales;**

The term “assault” has previously been defined for you in Instruction No. 2.

**Two, that as a result of that assault, Angelo Morales suffered serious bodily injury;**

“Serious bodily injury” means bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the functions of a bodily member, organ, or mental faculty.

**Three, that the assault happened in Indian country, in Oglala Lakota County, in the District of South Dakota;**

The parties stipulated that the alleged assault happened in Indian country. The effect of this stipulation was previously explained to you in Instruction No. 2.

**And four, that Schrader is an Indian.**

The parties stipulated that Schrader is an Indian. The effect of this stipulation was previously explained to you in Instruction No. 2.

For you to find Schrader guilty of the offense charged in Count 2 of the Second Superseding Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find Schrader not guilty of the offense charged in Count 2 of the Second Superseding Indictment.

FINAL INSTRUCTION NO. 4 – ASSAULT WITH INTENT TO COMMIT MURDER

For you to find Charles Schrader guilty of the offense of assault with intent to commit murder, as charged in Count 3 of the Second Superseding Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

**One, that on or about November 10, 2020, Charles Schrader assaulted Angelo Morales with the specific intent to commit murder;**

The term “assault” has previously been defined for you in Instruction No. 2.

“Murder” is defined as the unlawful killing of a human being with an intent, at the time of killing, willfully to take the life of a human being, or an intent willfully to act in callous and wanton disregard of the consequences to human life. This intent does not necessarily imply any ill will, spite, or hatred toward the individual killed or attempted to be killed.

**Two, that the assault happened in Indian country, name in Oglala County, in the District of South Dakota;**

The parties stipulated that the alleged assault happened in Indian country. The effect of this stipulation was previously explained to you in Instruction No. 2.

**And three, that Schrader is an Indian.**

The parties stipulated that Schrader is an Indian. The effect of this stipulation was previously explained to you in Instruction No. 2.

For you to find Schrader guilty of the offense charged in Count 3 of the Second Superseding Indictment, the prosecution must prove all three of these essential elements beyond a reasonable doubt. Otherwise, you must find Schrader not guilty of the offense charged in Count 3 of the Second Superseding Indictment.

FINAL INSTRUCTION NO. 5. – DISCHARGE OF A FIREARM DURING THE  
COMMISSION OF A CRIME OF VIOLENCE

For you to find Charles Schrader guilty of discharge of a firearm during the commission of a crime of violence, as charged in Count 4 of the Second Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

**One, that on or about November 10, 2020, Charles Schrader, committed a crime of violence, namely, Assault with a Dangerous Weapon<sup>156</sup>, as charged in Count 1 of the Second Superseding Indictment, or Assault Resulting in Serious Bodily Injury, as charged in Count 2 of the Second Superseding Indictment, or Assault with Intent to Commit Murder, as charged in Count 3 of the Second Superseding Indictment; and**

**Two, that Schrader knowingly discharged a firearm in furtherance of that crime.**

The phrase “in furtherance of” should be given its plain meaning, that is, the act of furthering, advancing, or helping forward. Here, the phrase “in furtherance of” requires that Schrader discharged the firearm with the intent that it advance, assist or help commit the crime, not that it actually did so.

For you to find Schrader guilty of the offense charged in Count 4 of the Second Superseding Indictment, the prosecution must prove both of these essential elements beyond a reasonable doubt. Otherwise, you must find Schrader not guilty of the offense charged in Count 4 of the Second Superseding Indictment.

FINAL INSTRUCTION NO. 6 – FLIGHT

KES The intentional <sup>flight</sup> ~~fight~~ of a defendant immediately after the commission of a crime, or after he is accused of a crime that has been committed, is not of course sufficient in itself to establish his guilt; but is a fact which, if proved, may be considered by the jury in the light of all other evidence in the case, in determining guilt or innocence. Whether or not evidence of flight or concealment shows a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within the province of the jury.

FINAL INSTRUCTION NO. 7 – IMPEACHMENT

In Preliminary Instruction No. 6, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight, if any, you think it deserves.

Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

FINAL INSTRUCTION NO. 8 – PRESUMPTION OF INNOCENCE AND BURDEN  
OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charge, or the fact that he is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of an offense charged against him.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.

This burden means that you must find the defendant not guilty of an offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

## FINAL INSTRUCTION NO. 9 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 10 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all of the evidence bearing on each element before you.
- Keep in mind that each count charges a separate offense. You must consider each count separately and return a separate verdict for each count.
- Take all the time that you feel is necessary.

Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

## FINAL INSTRUCTION NO. 11 – DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is guilty or not guilty. If the defendant is guilty, I will decide what the sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated October 7, 2021.

BY THE COURT:



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KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE