

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. FRANCIS STANFORD STRICKER, Defendant.</p>	<p>3:19-CR-30041-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.

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.

INSTRUCTION NO. 5

The indictment in this case charges the defendant with the crime of Assault of an Intimate Partner by Strangulation. 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 of an Intimate Partner by Strangulation or Suffocation, as charged in the indictment, has five essential elements, which are:

One, that on or about the 7th day of August, 2018, the defendant, Francis Stanford Stricker, assaulted Heather Dubray;

“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.

Two, that the defendant committed that assault by means of strangling, suffocating, or attempting to strangle or suffocate her;

“Strangling” means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or cause protracted injury to the victim.

“Suffocating” means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or cause protracted injury to the victim.

Three, that Heather Dubray was a spouse, intimate partner or dating partner of the defendant;

“Spouse or intimate partner” means a spouse or former spouse, a person with whom the defendant has a child, a person who has or does currently cohabit with the defendant, or a person with whom the defendant has or had a social relationship of a romantic or intimate nature. The existence of a romantic or intimate relationship can be determined by considering the length and type of the relationship and the frequency of interaction between the persons involved in that relationship.

“Dating partner” means a person who is currently or has been in a romantic or intimate relationship with the defendant. The existence of a dating relationship can be determined by considering the length and type of the relationship and the frequency of interaction between the persons involved in that relationship.

Four, that the defendant is an Indian; and

Five, that the alleged offense took place in Indian country.

If you find unanimously that the government has proved these five 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. 7

The crime charged in the indictment includes an attempt to commit an assault by strangulation or suffocation. A person may be found guilty of an attempt if he intended to assault the victim by strangulation or suffocation as alleged in the indictment and if he voluntarily and intentionally carried out some act which was a substantial step toward that assault.

A substantial step, as used in this instruction, must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer, viewing it in context, could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute.

INSTRUCTION NO. 8

If you unanimously find the defendant “Not Guilty” of the crime of Assault by Strangulation and Suffocation as charged in the indictment, or if after reasonable efforts, you are unable to reach a verdict as to the crime charged in the indictment, then you must proceed to determine the guilt or innocence of the defendant as to the crime of Simple Assault under this instruction.

The crime of Simple Assault, a lesser-included offense of the crime of Assault by Strangulation and Suffocation as charged in the indictment, has three essential elements, which are:

One, that on or about the 7th day of August, 2018, Francis Stanford Stricker, assaulted Heather Dubray;

“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 reasonable fear of immediate bodily harm or any intentional and voluntary harmful and offensive touching of another person without justification or excuse.

Two, that Francis Stanford Stricker 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 Francis Stanford Stricker and you further find beyond a reasonable doubt that Defendant was not acting in self-defense, then you must find him guilty of the lesser-included offense; otherwise you must find him not guilty of this crime.

If a person reasonably believes that 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 using force likely to cause death or great bodily harm is justified only if the person reasonably believes that such force is necessary to protect himself from what he reasonably believes to be a substantial risk of death or great bodily harm.

INSTRUCTION NO. 9

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. 10

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 statements as proof of the matter asserted.

INSTRUCTION NO. 11

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education, or experience, has become an 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 opinions.

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. 12

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. 13

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. FRANCIS STANFORD STRICKER, Defendant.</p>	<p>3:19-CR-30041-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 Defendant Francis Stanford Stricker _____ (fill in either “guilty” or “not guilty”) of the crime of assault of an intimate partner and dating partner by strangulation and suffocation as charged in the indictment.

If and only if you found Defendant not guilty on 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 Francis Stanford Stricker _____ (fill in either “guilty” or “not guilty”) of the lesser included offense of simple assault.

Dated January ____, 2020

Foreperson