

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ELIJAH WEST, Defendant.	5:18-CR-50025 JURY INSTRUCTIONS
--	--

INSTRUCTION NO. 1

Ladies and gentlemen of the jury, it is my duty now to explain the rules of law you must apply to this case.

You as jurors are the sole judges of the facts. But it is your duty to follow the law stated in these instructions, and to apply that law to the facts as you find them from the evidence before you. I also gave you instructions during the trial and you must follow those instructions. It would be a violation of your sworn duty to base your verdicts upon any rules of law other than the ones given you in these instructions, regardless of your personal feelings as to what the law ought to be.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

INSTRUCTION NO. 2

You have been chosen and sworn as jurors to try the issues of fact presented by the allegations of the indictment and the denials of those allegations made by the defendant in his pleas of “not guilty.” You are to perform this duty without bias or prejudice, because the law does not permit jurors to be governed by sympathy or public opinion. The accused and the public expect that you will carefully and impartially consider all of the evidence and will follow the law as stated by the Court, in order to reach just verdicts, regardless of the consequences to any party.

INSTRUCTION NO. 3

The indictment in this case charges the defendant with the crimes of assault with a dangerous weapon, assault resulting in serious bodily injury, and discharging a firearm during and in relation to a crime of violence. The defendant has pleaded not guilty to these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Therefore, the defendant, even though charged, begins the trial with no evidence against him. This presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of each crime charged.

There is no burden upon the defendant to prove that he is innocent. 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 verdicts.

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. 4

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. 5

I have mentioned the word “evidence.” The evidence in this case consists of the testimony of witnesses, and the documents and other things received as exhibits.

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 and questions that I struck from the record, or told you to disregard, are not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, you were instructed that some evidence was received for a limited purpose only and you must follow that instruction.

INSTRUCTION NO. 6

There are two types of evidence from which you may find the truth as to the facts of a case--direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

INSTRUCTION NO. 7

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 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. 8

The value of identification testimony depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later. Eyewitness identification must be evaluated with particular care.

In evaluating such testimony, you should consider all of the factors mentioned in these instructions concerning your assessment of the credibility of any witness, and you should also consider, in particular, whether the witness had an adequate opportunity to observe the person in question at the time of the offense and whether the identification is reliable. You may consider, in that regard, such matters as the witness's eyesight and ability to observe the person in question under the circumstances, the length of time the witness had to observe the person in question, any intoxication or other impairment of the witness at the time the witness observed the person in question, the prevailing conditions at that time in terms of lighting, visibility or distance and the like, whether the witness had known or observed the person at earlier times, and any description provided by the witness after the event and before identifying the defendant. Factors that bear on the likelihood of misidentification include the passage of time between the witness's exposure to the person in question and identification of the defendant, whether the witness was under stress when she first encountered the person in question, whether the person in question carried a weapon, and the race of the person in question and the witness.

In general, a witness uses his or her senses to make an identification. Usually the witness identifies an offender by the sense of sight -- but this is not necessarily so, and other senses may be used.

You should also consider whether the identification made by the witness after the offense was the product of her own recollection. You may consider, in that regard, the strength of the identification, and the circumstances under which the identification was made, keeping in mind that a witness may be certain but mistaken.

INSTRUCTION NO. 9

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of a greater credence. 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.

INSTRUCTION NO. 10

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 opinions on matters in that field and may also state the reasons for those 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. 11

The crime of assault with a dangerous weapon, as charged in Count I of the indictment, has five essential elements, which are:

1. On or about February 20, 2018, the defendant, without just cause or excuse, voluntarily and intentionally assaulted Ivey Long Black Cat.
2. A firearm was used and is a dangerous weapon, as defined in Instruction No. 17.
3. The defendant assaulted Ivey Long Black Cat with intent to do bodily harm to Ivey Long Black Cat.
4. The defendant is an Indian; and
5. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime charged in Count I of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

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

1. On or about February 20, 2018, the defendant voluntarily and intentionally assaulted Ivey Long Black Cat.
2. The assault resulted in serious bodily injury, as defined in Instruction No. 18, to Ivey Long Black Cat.
3. The defendant is an Indian; and
4. The alleged offense took place in Indian Country.

For you to find the defendant guilty of the crime charged in Count II of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 13

The crime of discharging a firearm during and in relation to a crime of violence, as charged in Count III of the indictment has two essential elements, which are:

1. On or about February 20, 2018, the defendant committed either the crime of assault with a dangerous weapon alleged in Count I or the crime of assault resulting in serious bodily injury alleged in Count II or both; and
2. That the defendant voluntarily and intentionally discharged a firearm during and in relation to that crime.

For you to find the defendant guilty of the crime charged in Count III of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 14

The crime of assault with a dangerous weapon, as charged in Count IV of the indictment, has five essential elements, which are:

1. On or about February 20, 2018, the defendant, without just cause or excuse, voluntarily and intentionally assaulted Jewel Eagleman.
2. A firearm was used and is a dangerous weapon, as defined in Instruction No. 17.
3. The defendant assaulted Jewel Eagleman with intent to do bodily harm to Jewel Eagleman.
4. The defendant is an Indian; and
5. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime charged in Count IV of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 15

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

1. On or about February 20, 2018, the defendant voluntarily and intentionally assaulted Jewel Eagleman.
2. The assault resulted in serious bodily injury, as defined in Instruction No. 18, to Jewel Eagleman.
3. The defendant is an Indian; and
4. The alleged offense took place in Indian Country.

For you to find the defendant guilty of the crime charged in Count V of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 16

The crime of discharging a firearm during and in relation to a crime of violence, as charged in Count VI of the indictment has two essential elements, which are:

1. On or about February 20, 2018, the defendant committed either the crime of assault with a dangerous weapon alleged in Count IV or the crime of assault resulting in serious bodily injury alleged in Count V or both; and
2. That the defendant voluntarily and intentionally discharged a firearm during and in relation to that crime.

For you to find the defendant guilty of the crime charged in Count VI of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 17

The phrase “dangerous weapon,” as used in these instructions means any object capable of being readily used by one person to inflict bodily injury upon another person.

INSTRUCTION NO. 18

The phrase “serious bodily injury” as used in these instructions means bodily injury which involves:

1. A substantial risk of death;
2. Extreme physical pain;
3. Protracted and obvious disfigurement; or
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

INSTRUCTION NO. 19

You must first consider the evidence pertaining to Counts I and II of the indictment and determine whether the government has proved any of those offenses beyond a reasonable doubt. When you reach a verdict on Counts I and II, only then may you consider Count III.

If your verdicts were not guilty on both Counts I and II, you must return a verdict of not guilty on Count III.

If your verdict was guilty on either Counts I or II or both, you then must decide if the government proved all the essential elements of Count III beyond a reasonable doubt.

Similarly, you must first consider the evidence pertaining to Counts IV and V of the indictment and determine whether the government has proved any of those offenses beyond a reasonable doubt. When you reach a verdict on Counts IV and V, only then may you consider Count VI.

If your verdicts were not guilty on both Counts IV and V, you must return a verdict of not guilty on Count VI.

If your verdict was guilty on either Counts IV or V or both, you then must decide if the government proved all the essential elements of Count VI beyond a reasonable doubt.

INSTRUCTION NO. 20

Intent may be proved like anything else. You may consider any statements and 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.

INSTRUCTION NO. 21

The intentional flight 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.

INSTRUCTION NO. 22

The indictment charges that offenses were committed “on or about” a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

INSTRUCTION NO. 23

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

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that defendant is an Indian and that the place where the alleged incidents are claimed to have occurred is in Indian country.

The defendant has not, by entering this agreement or stipulation, admitted his guilt of the offenses charged, and you may not draw any inference of guilt from the stipulation. The only effect of this stipulation is to establish the facts that the defendant is an Indian and that the place where the alleged offenses are claimed to have occurred is in Indian country.

INSTRUCTION NO. 24

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court.

A verdict form has been prepared for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdicts, you will have your foreperson fill in, date and sign the form to state the verdicts upon which you unanimously agree, and then notify the marshal that you have verdicts.

INSTRUCTION NO. 25

The verdicts must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdicts must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 26

If you have questions, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury.

You will note from the oath about to be taken by the marshal that he, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject concerning the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached unanimous verdicts.

INSTRUCTION NO. 27

It is proper to add a final caution.

Nothing that I have said in these instructions, and nothing that I have said or done during the trial, has been said or done to suggest to you what I think your verdicts should be.

What the verdicts shall be is your exclusive duty and responsibility.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELIJAH WEST,

Defendant.

5:18-CR-50025

VERDICTS

Please return the verdicts by placing an "X" in the space provided.

COUNT I

We, the jury in the above entitled action, as to the crime of assault with a dangerous weapon as charged in Count I of the indictment, find Elijah West:

_____ NOT GUILTY _____ GUILTY

COUNT II

We, the jury in the above entitled action, as to the crime of assault resulting in serious bodily injury, as charged in Count II of the indictment, find Elijah West:

_____ NOT GUILTY _____ GUILTY

COUNT III

If, and only if, you found Elijah West GUILTY of the crime of assault with a dangerous weapon as charged in Count I or of the crime of assault resulting in serious bodily injury as charged in Count II or both such counts, then you must deliberate on the crime of discharging a firearm during and in relation to a crime of violence, and complete the following:

We, the jury in the above entitled action, as to the crime discharging a firearm during and in relation to a crime of violence, as charged in Count III of the indictment, find Elijah West:

_____ NOT GUILTY _____ GUILTY

COUNT IV

We, the jury in the above entitled action, as to the crime of assault with a dangerous weapon as charged in Count IV of the indictment, find Elijah West:

_____ NOT GUILTY _____ GUILTY

COUNT V

We, the jury in the above entitled action, as to the crime of assault resulting in serious bodily injury, as charged in Count V of the indictment, find Elijah West:

_____ NOT GUILTY _____ GUILTY

COUNT VI

If, and only if, you found Elijah West GUILTY of the crime of assault with a dangerous weapon as charged in Count IV or of the crime of assault resulting in serious bodily injury as charged in Count V or both such counts, then you must deliberate on the crime of discharging a firearm during and in relation to a crime of violence, and complete the following:

We, the jury in the above entitled action, as to the crime discharging a firearm during and in relation to a crime of violence, as charged in Count VI of the indictment, find Elijah West:

_____ NOT GUILTY _____ GUILTY

Dated this _____ day of October, 2018.

Foreperson