



UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Case No. 2:22-CR-148
	:	
TREVOR FRIZZELL,	:	
	:	
Defendant.	:	

JURY CHARGE

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them, just as it has been my duty to preside over the trial and decide what testimony and evidence is relevant under the law for your consideration.

On these legal matters, you must take the law as I give it to you. If any attorney has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room.

You should not, any of you, be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law may be—or ought to be—it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you.

THE CASE

This case is a criminal prosecution brought by the United States against the Defendant, Trevor Frizzell. The Indictment charges Mr. Frizzell on one count. It alleges that Trevor Frizzell assaulted P.B., a federal officer, on or about October 25, 2022.

You will receive a copy of the Indictment to take with you into the jury room.

You should refer to your copy of the Indictment to read the charge.

ROLE OF INDICTMENT

At this time, I would like to remind you of the function of an indictment. An indictment is merely a formal way to accuse a defendant of a crime preliminary to trial. An indictment is not evidence. It does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the nature of the charge against Mr. Frizzell.

Mr. Frizzell has pled not guilty to the count in the Indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact that have been raised by the allegations within the Indictment and the denial made by the not guilty plea of Mr. Frizzell. You are to perform this duty without bias or prejudice against Mr. Frizzell or the prosecution.

PRESUMPTION OF INNOCENCE, REASONABLE DOUBT AND BURDEN OF PROOF

The law presumes that the defendant is innocent of the charges against him. The presumption of innocence lasts throughout the trial and during your deliberations. The presumption of innocence ends only if you, the jury, find beyond a reasonable doubt that the defendant is guilty. Should the government fail to prove the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

The question naturally is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate

to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not a caprice or whim; it is not a speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. Under your oath as jurors you are not to be swayed by sympathy; you are to be guided solely by the evidence in this case. Reasonable doubt may arise from a lack of evidence.

In a criminal case, the burden is upon the government to prove the defendant's guilt of each element of the charge beyond a reasonable doubt. This burden never shifts to the defendant, which means that it is always the government's burden to prove each of the elements of the crime charged beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

If, after a fair and impartial consideration of all the evidence against the defendant, you have a reasonable doubt, it is your duty to find the defendant not guilty. On the other hand, if, after fair and impartial consideration of all the evidence, you are satisfied of the defendant's guilt beyond a reasonable doubt, you should find the defendant guilty.

EVIDENCE

You have seen and heard the evidence presented during this trial, and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits admitted into evidence, and all the facts admitted or stipulated. I would now like to call your attention to certain guidelines by which you are to evaluate the evidence.

In deciding whether the government has met its burden of proof, you may consider two types of evidence: direct evidence and circumstantial evidence. Direct evidence is evidence that proves a disputed fact directly. For example, when a witness testifies about something she or he knows by virtue of their own senses – something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is the exhibit's existence or condition.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. Circumstantial evidence refers to inferring from one established fact, the existence or non-existence of some other fact, on the basis of reason, experience, and common sense. Circumstantial evidence is of no less value than direct evidence. The law makes no distinction between direct evidence and circumstantial evidence. You may

consider either or both, and may give them such weight as you conclude is warranted.

You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of Trevor Frizzell beyond a reasonable doubt, you must find him not guilty.

The evidence that you will consider in reaching your verdict consists, as I have said, only of the sworn testimony of witnesses, the stipulations made by the parties, and all the exhibits that have been received in evidence. Anything you have seen or heard outside the courtroom is not evidence and must be entirely disregarded. You are to consider only the evidence in this case. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proven, such reasonable inferences as you feel are justified in light of your experiences. However, if any juror has specialized knowledge, expertise, or information with regard to the facts and circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

QUESTIONS, OBJECTIONS, AND ARGUMENTS EXCLUDED

Let me also emphasize that a lawyer's questions are not evidence. At times, a lawyer on cross-examination may have incorporated into a question a statement which assumed certain facts to be true and asked the witness if the statement was true. If the witness denies the truth of a statement, and if there is no evidence in the record proving that the assumed fact is true, then you may not consider the fact to be true simply because it was contained in the lawyer's question.

Over the course of the trial, I have ruled on objections made by the attorneys. These objections and my subsequent rulings are legal issues for the Court to decide and are not for your concern or consideration. It is the duty and job of the attorneys to make objections and you should not hold it against either side.

ARGUMENTS AND STATEMENTS BY THE ATTORNEYS

The opening and closing statements, questions, and other remarks made by attorneys during the trial are not evidence. You should consider witness testimony and the exhibits in making your decisions about the facts in this case. Attorney statements and arguments reflect an effort to organize and describe the evidence for you. You should consider their

arguments carefully. In the end, however, it is the evidence admitted at trial which must govern your decision-making.

CREDIBILITY OF WITNESSES

You as jurors are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness since you may accept or reject the testimony of any witness in whole or in part. In weighing the testimony of the witnesses you have heard, you should consider their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if any; their resentment or anger toward the defendant, if any; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and

introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons may hear or see things differently or may have different points of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to important or to unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

In this case you have heard testimony from a number of witnesses. I am now going to give you some guidelines for your determinations regarding the testimony of the various types of witnesses presented in this case.

INTEREST IN OUTCOME

As a general matter, in evaluating the credibility of each witness, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive

to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

This is not to suggest that every witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

EXPERT WITNESSES

You have heard the testimony of expert witnesses in this case. An expert witness is permitted to express his or her opinion on those matters about which he or she has special knowledge, skill, experience, or training. Such testimony is presented to you on the theory that someone who is experienced or knowledgeable in a field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing an expert's testimony, you may consider his or her qualifications, opinions, and reasons for testifying, as well as all the other considerations that apply when assessing a witness's credibility. You may give the expert's testimony whatever weight, if any, you find it deserves in light of the

evidence in the case. You should not, however, accept the expert's testimony merely because he or she is an expert. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case, as I have said, rests solely with you.

LAW ENFORCEMENT WITNESSES

You have heard the testimony of law enforcement officials in this case. The fact that a witness may be employed by the federal, state, or local government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case. It is your decision, after reviewing all the evidence, whether to accept the testimony of law enforcement officials, and to give to that testimony whatever weight, if any, you find it deserves.

RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE

You may not consider any personal feelings you may have about the race, religion, national origin, sex, or age of Mr.

Frizzell or any of the witnesses in your deliberations over the verdict or in the weight given to any evidence.

GOVERNMENT AS A PARTY

You are to perform the duty of finding the facts without bias or prejudice toward any party. You are to perform this duty in an attitude of complete fairness and impartiality.

This case is important to the government, for the enforcement of criminal laws is a matter of prime concern to the community. Equally, this case is important to Mr. Frizzell, who is charged with a serious crime.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a case. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals before the Court.

PUNISHMENT

The punishment provided by law for the offenses charged in the Indictment is a matter exclusively within the province of the Court, and should never be considered by the jury, in any way, in arriving at an impartial verdict as to the guilt or innocence of Mr. Frizzell.

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

Having explained the general guidelines by which you will evaluate the evidence, I will now instruct you with regard to the law that is applicable to your determinations in this case. It is your duty as jurors to follow the law as stated to you in these instructions and to apply the rules of law to the facts that you find from the evidence. You will not be faithful to your oath as jurors if you find a verdict that is contrary to the law that I give to you.

However, it is the sole province of the jury to determine the facts in this case. I do not, by any instructions given to you, intend to persuade you in any way as to any question of fact.

The parties in this case have a right to expect that you will carefully and impartially consider all the evidence in the case, that you will follow the law as I state it to you, and that you will reach a just verdict.

"ON OR ABOUT" EXPLAINED

The indictment in this case charges that offenses were committed "on or about" October 25, 2022. Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in the Indictment, it is not necessary for the

government to prove that the offense was committed precisely on the date charged.

ELEMENTS OF OFFENSE OF ASSAULT UPON A FEDERAL OFFICER, 18 U.S.C.

111

The Indictment charges Trevor Frizzell with assault upon a federal officer. The Indictment reads as follows: "On or about October 25, 2022, in the District of Vermont, the defendant Trevor Frizzell, did knowingly and forcible assault, resist, oppose, impede, intimidate and interfere with P.B., a Mail Carrier with the United States Postal Service, while P.B. was engaged in the performance of his official duties, and did inflict bodily injury upon P.B. by punching him in the head."

Section 111 of Title 18 of the United States Code provides in part: "Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any [federal officer] while engaged in or on account of the performance of official duties [is guilty of a crime]."

In order to establish the crime charged in the indictment, you must find that the government has sustained its burden of proving each of the following elements beyond a reasonable doubt:

(1) that on or about the date specified in the indictment, P.B. was a federal officer, as I will define that term for you;

(2) that at that time, the defendant forcibly assaulted or resisted or opposed or impeded or intimidated or interfered with P.B. and this forcible action involved actual physical contact with P.B.

(3) that, at the time, P.B. was engaged in the performance of his official duties or that P.B. was assaulted on account of his official duties;

(4) that the defendant acted willfully; and

(5) that the defendant's actions resulted in bodily injury.

If you, the jury, find beyond a reasonable doubt from the evidence in the case that the government has proved each of the foregoing elements as charged in the indictment, then proof of the crime charged is complete and you may find the defendant guilty. If, on the other hand, you have reasonable doubt after careful consideration of all of the evidence as to any of the elements, then it is your duty to acquit.

ELEMENT ONE: VICTIM WAS A FEDERAL OFFICER

The first element that the government must prove beyond a reasonable doubt is that on or about the date specified in the indictment, P.B. was a federal officer.

I instruct you that a federal officer includes an employee of the United States Postal Service. However, it is for you to determine if P.B. held that title at the time in question.

The government does not have to prove that the defendant knew the identity of the victim or that the defendant knew that the victim was a federal officer. The crime of assault on a federal officer is designed to protect federal officers acting in pursuit of their official functions, and therefore, it is sufficient to satisfy this element for the government to prove that the victim was a federal officer at the time of the assault. Whether the defendant knew that the victim was a federal officer at the time is irrelevant to such a determination, and should not be considered by you.

ELEMENT TWO: FORCIBLE CONDUCT

The second element the government must prove beyond a reasonable doubt is that the defendant "forcibly assaulted or resisted or opposed or impeded or intimidated or interfered with" P.B., and this forcible action involved actual physical contact with P.B.

Although the indictment alleges that the defendant "did knowingly and forcibly assault, resist, oppose, impede, intimidate, and interfere with" the victim, I instruct you that it is not necessary for the government to prove that the defendant did all of those things, that is, assaulted, resisted, opposed, and so forth. It is sufficient if the government proves

beyond a reasonable doubt that the defendant did any one of these several alternative acts as charged.

All of the acts – assault, resist, oppose, impede, intimidate and interfere with – are modified by the word “forcibly.” Thus, before you can find the defendant guilty you must find, beyond a reasonable doubt, that he acted forcibly. Forcibly means by use of force. Physical force is obviously sufficient. You may also find that a person who, in fact, has the present ability to inflict bodily harm upon another and who threatens or attempts to inflict bodily harm upon such person has acted forcibly. In such a case, the threat must be a present one. A threat to use force at some unspecified time in the future does not satisfy this element.

In order to satisfy this element, the forcible action must involve actual physical contact with P.B.

An “assault” is an unlawful attempt or offer with force and violence to do injury to the person of another, with such apparent present possibility of carrying out such an attempt as to put the person against whom the attempt was made in fear of personal violence.

The word “resist” means opposing by physical power, striving against, exerting one’s self to counteract, defeat, or frustrate.

The word "oppose" means to resist by physical means; "impede" means stopping progress, obstructing, or hindering; "intimidate" means to make timid or fearful, to inspire or affect with fear, to frighten, to deter or overawe; "interfere with" means to come into collision with, to intermeddle, to hinder, to interpose, to intervene.

ELEMENT THREE: ENGAGED IN PERFORMANCE OF OFFICIAL DUTIES

The third element the government must prove beyond a reasonable doubt is that at the time of the alleged assault, the victim was engaged in (or was assaulted on account of) the performance of his official duties.

You may find the victim was so engaged if you find that, at the time of the alleged assault, he was acting within the scope of what he was employed to do. On the other hand, if you find that the victim was involved in a personal venture of his own, you must find that he was not engaged in the performance of his official duties, and you must acquit the defendant of the crime charged.

ELEMENT FOUR: WILLFULNESS

The fourth element that the government must prove beyond a reasonable doubt is that the defendant committed the act or acts charged in the indictment willfully. In other words, you must be

persuaded that the defendant acted voluntarily and intentionally, and not by mistake or accident.

ELEMENT FIVE: BODILY INJURY

The last element the government must prove beyond a reasonable doubt is that the defendant's assault directly caused a bodily injury.

"Bodily injury" means any injury, no matter how temporary. Bodily injury includes physical pain as well as any burn, cut, abrasion, bruise, disfigurement, illness, or impairment of a bodily function.

SELF DEFENSE

There has been evidence introduced that Mr. Frizzell acted in self defense. The law recognizes the right of a person who is not the aggressor to stand his ground and use force to defend himself or another. Every person has the right to use a reasonable amount of force in self-defense if (1) he has a reasonable belief that the use of force was necessary to defend himself or another against the immediate use of excessive force and (2) uses no more force than was reasonably necessary in the circumstances.

I instructed you that a person may use a reasonable amount of force in self-defense. A person may use an amount of force which, at the time of the incident, he actually and reasonably

believes is necessary to protect himself from imminent bodily harm. In deciding whether Mr. Frizzell used excessive force in defending himself, you may consider all the circumstances under which he acted.

Even if the other person is the aggressor and Mr. Frizzell is justified in using force in self-defense, he may not use any greater force than he actually and reasonably believes to be necessary under the circumstances to prevent the harm he reasonably believes is intended.

You are reminded that the burden of proof remains at all times on the government and that the defendant need not call any witnesses, nor offer any evidence. Thus, before you may convict, you must find beyond a reasonable doubt that the government has satisfied its burden of proving that the defendant did not act in self-defense. Therefore, if you have a reasonable doubt whether or not the defendant acted in self-defense, your verdict must be not guilty.

CONCLUSION

I caution you, members of the jury, that you are here to determine whether the government has proven Mr. Frizzell's guilt beyond a reasonable doubt. I remind you that the mere fact that Mr. Frizzell has been indicted is not evidence against him. Also, Mr. Frizzell is not on trial for any act or conduct or

offense not alleged in the Indictment.

Again, the punishment provided by law for the offenses charged in the Indictment is a matter exclusively within the province of the judge and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

It is your duty as jurors to consult with one another and to deliberate. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your other jurors. Do not hesitate to re-examine your own views and change your opinion if you think that you were wrong. Do not, however, surrender your honest convictions about the case solely because of the opinion of your other jurors, or for the mere purpose of returning a verdict.

To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous. The government has alleged that Mr. Frizzell forcibly assaulted a federal officer. In order to find Mr. Frizzell guilty of the charged offense, you must find that the government has proven every element of the offense beyond a reasonable doubt and that conclusion must be unanimous.

At this time, I would like to offer my sincere thanks to the alternates.

Upon retiring to the jury room, your foreperson will

preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience. If you are able to reach an agreement as to the Counts contained in the Indictment, you will have your foreperson record a verdict of guilty or not guilty. Your foreperson will then sign and date the verdict form and you will return to the courtroom.

If, during your deliberations you should desire to communicate with the Court, please put your message or question in writing signed by the foreperson and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can speak with you. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

If during your deliberations you want to see any of the exhibits, they will be sent to you in the jury room upon request. If you want any of the testimony read, that can also be done. But, please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in requesting exhibits or portions of testimony that you may want. Your requests for exhibits or testimony – in fact any communication with the Court – should be made to me in writing,

signed by your foreperson, and given to one of the marshals.

You have been permitted to take notes during the trial for use in your deliberations. You may take these notes with you when you retire to deliberate. They may be used to assist your recollection of the evidence, but your memory, as jurors, controls. Your notes are not evidence and should not take precedence over your independent recollections of the evidence. The notes that you took are strictly confidential. Do not disclose your notes to anyone other than the other jurors. Your notes should remain in the jury room and will be collected at the end of the case.

A copy of the charge will go with you into the jury room for your use.

I appoint REDACTED as your foreperson.

Dated at Burlington, in the District of Vermont, this 26th day of October 2023.

/s/ William K. Sessions III
William K. Sessions III
District Court Judge