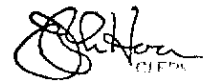


UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

**FILED**

SEP 02 2009



CLERK

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UNITED STATES OF AMERICA,

Plaintiff,

-vs-

JACOB DALE PAY PAY,

Defendant.

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CR 08-30115

JURY INSTRUCTIONS

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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. It would be a violation of your sworn duty to base your verdict 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 allegation of the indictment and the denial made by the defendant in his plea 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 a just verdict, regardless of the consequences to any party.

INSTRUCTION NO. 3

The indictment in this case charges the defendant with the crime of abusive sexual contact. The defendant has pleaded not guilty to this charge.

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 the 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 verdict.

INSTRUCTION NO. 4

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, 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, 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 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 such instructions.

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 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. 9

As I told you in my preliminary instructions, this defendant is on trial here only for the crime charged in the indictment, not for anything else. You have heard evidence of the defendant's alleged past acts towards [REDACTED]. These other alleged acts, even if committed by the defendant, do not mean that the defendant is guilty of the crime charged in the indictment, and he has pled not guilty to the crime charged in the indictment.

The Court has determined that this evidence of other acts may be admitted for a limited purpose. As with all other evidence, you, the members of the jury, may give such evidence and the testimony of such witness such weight, if any, and such relevance, if any, as you think it is entitled to receive.

INSTRUCTION NO. 10

You have heard testimony that Jacob Dale Pay Pay made a statement to special agent Kelly Kenser of the Federal Bureau of Investigation. It is for you to decide:

· First, whether Jacob Dale Pay Pay made the statement and

Second, if so, how much weight you should give to it.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statement may have been made.

INSTRUCTION NO. 11

The crime of abusive sexual contact, as charged in the indictment, has four essential elements, which are:

1. On or about between December 13, 2004 and December 12, 2005, the defendant did knowingly and intentionally cause or attempt to cause [REDACTED] [REDACTED] to engage in sexual contact, namely, the intentional touching, either directly or through the clothing, of his penis with [REDACTED] hand with an intent to abuse, humiliate, harass, or degrade [REDACTED] or to arouse or gratify the sexual desire of the defendant;
2. At the time of the alleged offense, [REDACTED] had not attained the age of 12 years;
3. The defendant is an Indian; and
4. The offense took place in Indian country.

For you to find the defendant guilty of this crime as charged in 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

Intent 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 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. 13

One of the issues in this case is whether the defendant was intoxicated at the time the act charged in the indictment was committed.

Being under the influence of alcohol provides a legal excuse for the commission of a crime only if the effect of the alcohol makes it impossible for the defendant to have the specific intent to (a) abuse, humiliate, harass, or degrade the alleged victim, or to arouse and gratify the sexual desire of the defendant, or (b) to attempt to commit the act charged. Evidence that defendant may have acted while under the influence of alcohol may be considered by you, together with all the other evidence, in determining whether or not he did in fact have such specific intent.

INSTRUCTION NO. 14

The indictment charges that the offense was committed "on or about between" certain dates. 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 in question was committed on a date reasonably near the time frame alleged as to that offense.

INSTRUCTION NO. 15

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

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

The defendant has not, by entering this agreement or stipulation, 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 establish the fact that the defendant is an Indian and that the place where the alleged offense is claimed to have occurred is in Indian country.



INSTRUCTION NO. 16

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 verdict, you will have your foreperson fill in, date and sign the form to state the verdict upon which you unanimously agree, and then notify the marshal that you have a verdict.

INSTRUCTION NO. 17

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict 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. 18

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 touching 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 a unanimous verdict.

INSTRUCTION NO. 19

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 verdict should be.

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

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

-vs-

JACOB DALE PAY PAY,

Defendant.

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CR 08-30115

VERDICT

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

We, the jury in the above entitled action, as to the crime of abusive sexual contact, as charged in the indictment, find Jacob Dale Pay Pay:

\_\_\_\_\_ NOT GUILTY \_\_\_\_\_ GUILTY

Dated this \_\_\_\_\_ day of September, 2009.

\_\_\_\_\_  
Foreperson