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**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 08-50067-01-KES

vs.

**FINAL
INSTRUCTIONS
TO THE JURY**

CHARLES LITTLE BEAR,
a/k/a Dale Little Bear

Defendant.

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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 – COUNT I – AGGRAVATED SEXUAL ABUSE OF A CHILD

Count I of the second superseding indictment charges that on or about August 18, 2007, at Red Shirt, in Indian Country, in the District of South Dakota, the defendant, Charles Little Bear, a/k/a Dale Little Bear, an Indian, did knowingly cause and attempt to cause [REDACTED], a person over the age of 12 but under the age of 16, and who was at least 4 years younger than the defendant, to engage in a sexual act by the use of force.

Elements

For you to find Charles Little Bear guilty of “aggravated sexual abuse of a child” as charged in **Count I** of the second superseding indictment, the prosecution must prove the following seven essential elements beyond a reasonable doubt:

One, that on or about August 18, 2007, Charles Little Bear caused [REDACTED] to engage in a sexual act or attempted to do so;

The term “sexual act” as used within this instruction means contact between the penis and the vulva, and, for purposes of this instruction, contact involving the penis occurs upon penetration, however slight.

A person may be found guilty of an attempt if he intended to engage in a sexual act and voluntarily and intentionally carried out some act which was a substantial step toward engaging in a sexual act.

A substantial step 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.

Two, that [REDACTED] was over the age of 12 but under the age of 16 at that time;

Three, that [REDACTED] was at least 4 years younger than Charles Little Bear;

Four, that Charles Little Bear did so by using force against [REDACTED];

The term “force,” as used in these instructions, means the use or threatened use of a weapon; the use of physical force sufficient to overcome, restrain, or injure a person; a threat of harm sufficient to coerce or compel submission by the alleged victim; or the use of force sufficient to prevent the alleged victim from escaping the sexual act.

Five, that Charles Little Bear did such acts knowingly;

An act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake, or accident. You may consider the evidence of defendant’s acts and words, along with all the evidence, in deciding whether defendant acted knowingly.

Six and seven, that Charles Little Bear is an Indian person; and that the offense took place in Indian Country, namely in Red Shirt in the District of South Dakota.

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

The defendant has not, by entering into 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 present to the jury the facts that the defendant is an Indian person and that if the jury finds that the alleged incident occurred, it occurred in Indian country.

For you to find the defendant guilty of aggravated sexual abuse of a child, as charged in **Count I** of the second superseding indictment, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find him not guilty.

Lesser Included Offense – Abusive Sexual Contact

If your verdict under this instruction is not guilty of aggravated sexual abuse of a child, or if after all reasonable efforts you are unable to reach a verdict on **Count I**, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of abusive sexual contact. The crime of abusive sexual contact, a lesser included offense of the crime charged in **Count I** of the second superseding indictment, has the following six essential elements:

One, that on or about August 18, 2007, Charles Little Bear caused [REDACTED] to engage in sexual contact or attempted to do so;

The term “sexual contact,” as used in this instruction, means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

A person may be found guilty of an attempt if he intended to engage in sexual contact and voluntarily and intentionally carried out some act which was a substantial step toward engaging in sexual contact.

The term “substantial step” was previously defined for you in this instruction.

Two, that [REDACTED] was over the age of 12 but under the age of 16 at that time;

Three, that [REDACTED] was at least 4 years younger than Charles Little Bear;

Four, that Charles Little Bear did such acts knowingly;

The term “knowingly” was previously defined for you in this instruction.

Five and six, that Charles Little Bear is an Indian person; and that the offense took place in Indian Country, namely in Red Shirt in the District of South Dakota.

This was explained to you previously in this instruction.

For you to find the defendant guilty of abusive sexual contact, the prosecution must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

FINAL INSTRUCTION NO. 3 – COUNT II – ABUSIVE SEXUAL CONTACT BY
USE OF FORCE

Count II of the second superseding indictment charges that on or about between September, 2006, and January, 2007, at #4 Community, in Indian Country, in the District of South Dakota, the defendant, Charles Little Bear, a/k/a Dale Little Bear, an Indian, did knowingly force [REDACTED] to engage and attempt to engage in sexual contact, to wit, the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, and buttocks of [REDACTED], a person over the age of 12 but under the age of 16, and who was at least 4 years younger than the defendant with the intent to abuse, humiliate, harass, degrade, and arouse and gratify the sexual desire of any person.

Elements

For you to find Charles Little Bear guilty of “abusive sexual contact by use of force” as charged in **Count II** of the second superseding indictment, the prosecution must prove the following seven essential elements beyond a reasonable doubt:

One, that on or about between September of 2006 and January of 2007, Charles Little Bear caused [REDACTED] to engage in sexual contact or attempted to do so;

The term “sexual contact,” as used in this instruction, means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

A person may be found guilty of an attempt if he intended to engage in sexual contact and voluntarily and intentionally carried out some act which was a substantial step toward engaging in sexual contact.

The term “substantial step” was defined for you in Final Instruction No. 2.

Two, that [REDACTED] was over the age of 12 but under the age of 16 at that time;

Three, that [REDACTED] was at least 4 years younger than Charles Little Bear;

Four, that Charles Little Bear did so by using force against [REDACTED];

The term “force” was defined for you in Final Instruction No. 2.

Five, that Charles Little Bear did such acts knowingly;

The term “knowingly” was defined for you in Final Instruction No. 2.

Six and seven, that Charles Little Bear is an Indian person; and that the offense took place in Indian Country, namely in #4 Community in the District of South Dakota.

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian person and that the place where the alleged incident occurred, #4 Community, is in Indian country.

The defendant has not, by entering into 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 present to the jury the facts that the defendant is an Indian person and that if the jury finds that the alleged incident occurred, it occurred in Indian country.

For you to find the defendant guilty of abusive sexual contact by use of force, as charged in **Count II** of the second superseding indictment, the

prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find him not guilty.

Lesser Included Offense – Abusive Sexual Contact

If your verdict under this instruction is not guilty of abusive sexual contact by use of force, or if after all reasonable efforts you are unable to reach a verdict on **Count II**, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of abusive sexual contact. The crime of abusive sexual contact, a lesser included offense of the crime charged in **Count II** of the second superseding indictment, has the following six essential elements:

One, that on or about between September of 2006 and January of 2007, Charles Little Bear caused [REDACTED] to engage in sexual contact or attempted to do;

The terms “sexual contact” and “attempt” were previously defined for you in this instruction.

Two, that [REDACTED] was over the age of 12 but under the age of 16 at that time;

Three, that [REDACTED] was at least 4 years younger than Charles Little Bear;

Four, that Charles Little Bear did such acts knowingly;

The term “knowingly” was defined for you in Final Instruction No. 2.

Five and six, that Charles Little Bear is an Indian person; and that the offense took place in Indian Country, namely in #4 Community in the District of South Dakota.

This was explained to you previously in this instruction.

For you to find the defendant guilty of abusive sexual contact, the prosecution must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

FINAL INSTRUCTION NO. 4 – THEORY OF DEFENSE

Charles Little Bear's theory of defense is that the complaining witness is not correct in her allegations against him and that sexual inappropriateness did not take place.

FINAL INSTRUCTION NO. 5 – IMPEACHMENT

In Preliminary Instruction No. 7, 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 said or did something, or 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.

You have heard evidence that the defendant was previously convicted of a crime. You may use that evidence only to help you decide whether to believe his testimony and how much weight to give it. That evidence does not mean that he committed the crimes charged here, and you must not use that evidence as any proof of the crimes charged in this case.

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

FINAL INSTRUCTION NO. 6 –
PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

Charles Little Bear is presumed innocent, and therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find the defendant not guilty. The presumption of innocence may be overcome only if the prosecution proves, beyond a reasonable doubt, each element of a crime charged against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant, for 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 who are called to testify by the prosecution.

Unless the prosecution proves beyond a reasonable doubt that Charles Little Bear has committed each and every element of an offense charged in the second superseding indictment against him, you must find him not guilty of that offense.

FINAL INSTRUCTION NO. 7 – REASONABLE DOUBT

A reasonable doubt may arise from the evidence or lack of evidence produced by the prosecution. 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 in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

FINAL INSTRUCTION NO. 8 – DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. Your verdict as to the defendant must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to a unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on an offense charged against him, then the defendant should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on an offense charged, then your vote should be for a verdict of guilty against the defendant on that charge, and if all of you reach that conclusion, then the verdict of the jury must be guilty for the defendant on that charge. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of a crime charged.

Remember also that the question before you can never be whether the government wins or loses the case. The government, as well as society, always

wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

FINAL INSTRUCTION NO. 9 – DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

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.

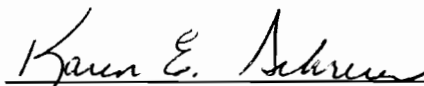
Second, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

Third, 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.**

Fourth, your verdict must be based solely on the evidence and on the law in these instructions. **The verdict, whether not guilty or guilty, must be unanimous.** 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.

Dated December 17, 2009.



Karen E. Schreier
Chief Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES LITTLE BEAR,
a/k/a Dale Little Bear,

Defendant.

No. CR 08-50067-01-KES

VERDICT

We, the Jury, unanimously find the defendant, Charles Little Bear, a/k/a Dale Little Bear, not guilty or guilty as follows:

(Please return a verdict by placing an "X" or "√" in the spaces provided.)

COUNT I: AGGRAVATED SEXUAL ABUSE OF A CHILD		VERDICT
Step 1:	On the charge of "aggravated sexual abuse of a child," as explained in Final Instruction No. 2, please mark your verdict.	___ Not Guilty ___ Guilty
Step 2:	If you have found Charles Little Bear guilty of "aggravated sexual abuse of a child," skip Count I(a) and proceed to Count II. If you have found Charles Little Bear not guilty on Count I, or if you are unable to reach a verdict on Count I, then proceed to Count I(a).	
COUNT I(a): ABUSIVE SEXUAL CONTACT		VERDICT
Step 1:	On the lesser included offense of "abusive sexual contact," as explained in Final Instruction No. 2, please mark your verdict.	___ Not Guilty ___ Guilty
Step 2:	Proceed to Count II.	

COUNT II: ABUSIVE SEXUAL CONTACT BY USE OF FORCE		VERDICT
Step 1:	On the charge of “abusive sexual contact by use of force,” as explained in Final Instruction No. 3, please mark your verdict.	___ Not Guilty ___ Guilty
Step 2:	If you have found Charles Little Bear guilty of “abusive sexual contact by use of force,” skip Count II(a) and sign and date the verdict form. If you have found Charles Little Bear not guilty on Count II, or if you are unable to reach a verdict on Count II, then proceed to Count II(a).	
COUNT II(a): ABUSIVE SEXUAL CONTACT		VERDICT
Step 1:	On the lesser included offense of “abusive sexual contact,” as explained in Final Instruction No. 3, please mark your verdict.	___ Not Guilty ___ Guilty
Step 2:	Please sign and date the verdict form.	

Date

Foreperson