

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
AUG 25, 2011
[Signature]
CLERK

UNITED STATES OF AMERICA,
Plaintiff,

No. CR 11-40012-01-KES

vs.

**FINAL
INSTRUCTIONS
TO THE JURY
[Redacted]**

JAMES BRUGUIER,
a/k/a James Bruguier, Jr.,
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 1 – AGGRAVATED SEXUAL ABUSE

Count 1 of the second superseding indictment charges that on or about January 11, 2011, at Lake Andes, in Indian Country, in the District of South Dakota, James Bruguier, a/k/a James Bruguier, Jr., an Indian, did knowingly cause and attempt to cause Crystal Stricker to engage in a sexual act by using force against her person.

Elements

For you to find James Bruguier guilty of **Count 1** in the second superseding indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, that on or about January 11, 2011, James Bruguier did knowingly cause or attempt to cause Crystal Stricker to engage in a sexual act;

For this offense, sexual act is defined as the penetration, however slight, of the vulva by the penis.

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.

Two, that James Bruguier did so by using force against Crystal Stricker;

The term “force” 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.

Three and four, that James Bruguier is an Indian; and that the offense took place in Indian country, namely at Lake Andes in the District of South Dakota.

The government and James Bruguier have stipulated—that is, they have agreed—that James Bruguier is an Indian, and that the locations where the crimes he is charged with are said to have occurred are in Indian Country. You must therefore treat those facts as having been proved.

However, these facts simply establish that the federal government has jurisdiction to prosecute these charges. They do not prove that the charges are true. James Bruguier has pled not guilty to the charges against him and it is the government's burden to prove otherwise at trial.

For you to find James Bruguier guilty of aggravated sexual abuse, as charged in **Count 1** 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 of this offense.

FINAL INSTRUCTION NO. 3 – COUNT 2 – SEXUAL ABUSE OF AN
INCAPACITATED PERSON

Count 2 of the second superseding indictment charges that on or about January 11, 2011, at Lake Andes, in Indian Country, in the District of South Dakota, James Bruguier, a/k/a James Bruguier, Jr., an Indian, did knowingly engage in and attempt to engage in a sexual act with Crystal Stricker, who at the time was incapable of appraising the nature of the conduct and was physically incapable of declining participation in and communicating unwillingness to engage in a sexual act.

Elements

For you to find James Bruguier guilty of **Count 2** in the second superseding indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, that on or about January 11, 2011, James Bruguier did knowingly cause or attempt to cause Crystal Stricker to engage in a sexual act;

For this offense, sexual act is defined as the penetration, however slight, of the vulva by the penis.

The term “knowingly” was defined in Final Instruction Number 2.

Two, that Crystal Stricker was physically incapable of declining participation in and communicating unwillingness to engage in that sexual act;

Three and four, that James Bruguier is an Indian; and that the offense took place in Indian country, namely at Lake Andes in the District of South Dakota.

As noted in Final Instruction Number 2, 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 occurred, at Lake Andes, is in Indian Country.

For you to find James Bruguier guilty of sexual abuse of an incapacitated person, as charged in **Count 2** 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 of this offense.

FINAL INSTRUCTION NO. 4 – COUNT 3 – BURGLARY

Count 3 of the second superseding indictment charges that on or about between June 1, 2010, and October 1, 2010, at Lake Andes, in Indian Country, in the District of South Dakota, James Bruguier, a/k/a James Bruguier, Jr., an Indian, did enter and remain in an occupied structure, that is the residence of Jodi Dion, in the nighttime, with the intent to commit a crime of sexual assault therein.

Elements

For you to find James Bruguier guilty of **Count 3** in the second superseding indictment, the prosecution must prove the following six essential elements beyond a reasonable doubt:

One, that James Bruguier unlawfully entered or remained in the Jodi Dion residence on or about between June 1, 2010, and October 1, 2010;

Two, that the Jodi Dion residence was an occupied structure;

Occupied structure means any structure in which, at the time, any person was present.

Three, that James Bruguier entered or remained therein with the intent to commit the crime of sexual assault;

An element of the crime of first degree burglary as charged in Count 3 is that the unlawful entering or remaining in the Jodi Dion residence was with the specific intent to commit the crime of sexual assault. If such specific intent did not exist, this crime has not been committed.

The intent with which an act is done is shown by the circumstances surrounding the act, the manner in which it is done, and the means used.

One of the issues in this case is whether James Bruguier was intoxicated at the time the acts charged in Count 3 were 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 James Bruguier to have formed the intent to commit the sexual assault alleged. Evidence that James Bruguier acted while under the influence of alcohol may be considered by you, together with all the other evidence, in determining whether or not he had the specific intent to commit the crime of sexual assault.

Four, that James Bruguier entered or remained in the Jodi Dion residence in the nighttime;

Nighttime means the period between 30 minutes after sunset and 30 minutes before sunrise.

Five and six, that James Bruguier is an Indian; and that the offense took place in Indian country, namely at Lake Andes in the District of South Dakota.

As noted in Final Instruction Number 2, 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 occurred, at Lake Andes, is in Indian Country.

For you to find James Bruguier guilty of first degree burglary as charged in **Count 3** 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 of this offense.

FINAL INSTRUCTION NO. 5 – COUNT 4 – AGGRAVATED SEXUAL ABUSE

Count 4 of the second superseding indictment charges that on or about between June 1, 2010, and October 1, 2010, at Lake Andes, in Indian Country, in the District of South Dakota, James Bruguier, a/k/a James Bruguier, Jr., an Indian, did knowingly cause and attempt to cause [name omitted] to engage in a sexual act by using force against her person.

Elements

For you to find James Bruguier guilty of **Count 4** in the second superseding indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, that on or about between June 1, 2010, and October 1, 2010, James Bruguier did knowingly cause or attempt to cause [name omitted] to engage in a sexual act;

For this offense, sexual act is defined as the penetration, however slight, of the vulva by the penis.

The term “knowingly” was defined in Final Instruction Number 2.

Two, that James Bruguier did so by using force against [name omitted];

The term “force” was defined in Final Instruction Number 2.

Three and four, that James Bruguier is an Indian; and that the offense took place in Indian country, namely at Lake Andes in the District of South Dakota.

As noted in Final Instruction Number 2, 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 occurred, at Lake Andes, is in Indian Country.

For you to find James Bruguier guilty of aggravated sexual abuse, as charged in **Count 4** 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 of this offense.

FINAL INSTRUCTION NO. 6 – COUNT 5 – ATTEMPTED SEXUAL ABUSE

Count 5 of the second superseding indictment charges that on or about between June 1, 2010, and October 1, 2010, at Lake Andes, in Indian Country, in the District of South Dakota, James Bruguier, a/k/a James Bruguier, Jr., an Indian, did knowingly attempt to cause Vicki Johnson to engage in a sexual act by using force against her person.

Elements

For you to find James Bruguier guilty of **Count 5** in the second superseding indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that James Bruguier did knowingly attempt to cause Vicki Johnson to engage in a sexual act on or about between June 1, 2010, and October 1, 2010;

For this offense, sexual act could be any of the following:

- (1) penetration, however slight, of the vulva or anus by the penis;
- (2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or
- (3) penetration, however slight, of the anal or genital opening of another by a hand, finger, or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

James Bruguier may be found guilty of an attempt if he intended to cause Vicki Johnson to engage in a sexual act and voluntarily and intentionally carried out some act which was a substantial step toward that 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 James Bruguier did so by using force against Vicki Johnson;

The term "force" was defined in Final Instruction Number 2.

Three, that James Bruguier intended to cause Vicki Johnson to engage in a sexual act;

An element of the crime of attempted sexual abuse as charged in Count 5 is that the attempted sexual abuse was done with the specific intent to commit the crime of attempted sexual abuse. If such specific intent did not exist, this crime has not been committed.

The intent with which an act is done is shown by the circumstances surrounding the act, the manner in which it is done, and the means used.

One of the issues in this case is whether James Bruguier was intoxicated at the time the acts charged in Count 5 of the second superseding indictment were 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 James Bruguier to have formed the intent to commit the attempted sexual assault as alleged. Evidence that James Bruguier acted while under the influence of alcohol may be considered by you, together with all the other evidence, in determining whether or not he had the specific intent to commit the crime of attempted sexual assault as charged in Count 5.

Four and five, that James Bruguier is an Indian; and that the offense took place in Indian country, namely at Lake Andes in the District of South Dakota.

As noted in Final Instruction Number 2, 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 occurred, at Lake Andes, is in Indian Country.

For you to find James Bruguier guilty of attempted sexual abuse, as charged in **Count 5** 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 of this offense.

FINAL INSTRUCTION NO. 7 – COUNT 6 – SEXUAL ABUSE OF A MINOR

Count 6 of the second superseding indictment charges that on or about between June 1, 2004, and December 11, 2006, at Lake Andes, in Indian Country, in the District of South Dakota, James Bruguier, a/k/a James Bruguier, Jr., an Indian, did knowingly engage in and attempt to engage in a sexual act with [name omitted], a person who had attained the age of 12, but who had not attained the age of 16, and was at least 4 years younger than James Bruguier, a/k/a James Bruguier, Jr.

Elements

For you to find James Bruguier guilty of **Count 6** in the second superseding indictment, the prosecution must prove the following six essential elements beyond a reasonable doubt:

One, that on or about between June 1, 2004, and December 11, 2006, James Bruguier did knowingly cause or attempt to cause [name omitted] to engage in a sexual act;

For this offense, sexual act is defined as the penetration, however slight, of the vulva by the penis.

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

The government does not have to prove that James Bruguier knew [name omitted] age at the time alleged.

Three, that [name omitted] was at least 4 years younger than James Bruguier;

The government does not have to prove that at the time alleged James Bruguier knew that this age difference existed.

Four, that James Bruguier did such acts knowingly;

The term “knowingly” was defined in Final Instruction Number 2.

Five and six, that James Bruguier is an Indian; and that the offense took place in Indian country, namely at Lake Andes in the District of South Dakota.

As noted in Final Instruction Number 2, 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 occurred, at Lake Andes, is in Indian Country.

For you to find James Bruguier guilty of sexual abuse of a minor, as charged in **Count 6** 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 of this offense.

FINAL INSTRUCTION NO. 8 – 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 felony. 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. 9 –
PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

James Bruguier 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 the crimes 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 James Bruguier 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. 10 – 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. 11 – TESTIMONY

Testimony of a rape victim herself, if believed beyond a reasonable doubt, is sufficient to support a finding of guilt.

FINAL INSTRUCTION NO. 12 – 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. 13 – 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.

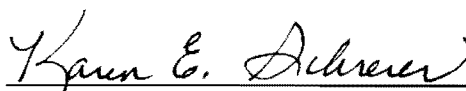
Second, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the 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 court security officer that you are ready to return to the courtroom.

Dated August 25, 2011.



Karen E. Schreier
Chief Judge