

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA</p> <p>Plaintiff,</p> <p>-vs-</p> <p>SHANNON WHITE BUFFALO,</p> <p>Defendant.</p>	<p>13-30149-RAL</p> <p>FINAL INSTRUCTIONS TO JURY</p>
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INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions. The instructions I am about to give you now are in writing and will be available to you in the jury room.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important.

All instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 3

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 that I struck from the record, or told you to disregard, is not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

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

INSTRUCTION NO. 4

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.

You should judge the testimony of the defendant in the same manner as you judge the testimony of the other witnesses.

INSTRUCTION NO. 5

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. 6

The indictment in this case charges the defendant with two counts of Aggravated Sexual Abuse of a Child, four counts of Abusive Sexual Contact, and one count of Sexual Abuse of a Minor. 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. Thus the defendant, even though charged, begins the trial with no evidence against him. The 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 element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

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

INSTRUCTION NO. 7

The crime of Aggravated Sexual Abuse of a Child, as charged in Count I of the indictment, has four elements, which are:

One, that on or about between the 1st day of August, 2010, and the 14th day of December, 2012, the defendant knowingly caused or knowingly attempted to cause D.B. to engage in a sexual act, as the term is defined in Instruction 14;

Two, that D.B. had not attained the age of 12 at the time of the sexual act;

Three, that Shannon White Buffalo is an Indian; and

Four, that the offense took place in Indian country.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in Count I of the indictment, otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 8

The crime of Abusive Sexual Contact, as charged in Count II of the indictment, has five elements, which are:

***One*, that on or about between the 1st day of August, 2010, and the 14th day of December, 2012, Shannon White Buffalo did knowingly and intentionally engage in, or attempt to engage in, sexual contact, as the term is defined in Instruction 15, with D.B.;**

***Two*, that at the time of such conduct, D.B. had not attained the age of 12 years;**

***Three*, that the sexual contact was done with an intent to abuse, humiliate, harass, or degrade D.B., or to arouse or gratify the sexual desire of Shannon White Buffalo;**

***Four*, that Shannon White Buffalo is an Indian; and**

***Five*, that the offense took place in Indian country.**

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in Count II of the indictment, otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 9

The crime of Sexual Abuse of a Minor, as charged in Count III of the indictment, has five elements, which are:

One, that on or about the 15th day of December, 2012, and the 28th day of February, 2013, Shannon White Buffalo did knowingly engage in, or attempt to engage in, a sexual act, as the term is defined in Instruction 14, with D.B.;

Two, that at the time of the alleged offense, D.B. had attained the age of 12 years, but had not attained the age of 16 years;

Three, that at the time of the alleged offense, D.B. was at least 4 years younger than Shannon White Buffalo;

Four, that Shannon White Buffalo is an Indian; and

Five, that the alleged offense took place in Indian country.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in Count III of the indictment; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 10

The crime of Abusive Sexual Contact, as charged in Count IV of the indictment, has six elements, which are:

***One*, that on or about between the 15th day of December, 2012, and the 28th day of February, 2013, Shannon White Buffalo did knowingly and intentionally engage in, or attempt to engage in, sexual contact, as the term is defined in Instruction 15, with D.B.;**

***Two*, that at the time of such conduct, D.B. had attained the age of 12 years, but had not attained the age of 16 years;**

***Three*, that at the time of the offense, D.B. was at least 4 years younger than Shannon White Buffalo;**

***Four*, that the sexual contact was done with an intent to abuse, humiliate, harass, or degrade D.B., or to arouse or gratify the sexual desire of Shannon White Buffalo;**

***Five*, that Shannon White Buffalo is an Indian; and**

***Six*, that the offense took place in Indian country.**

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in Count IV of the indictment, otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 11

The crime of Aggravated Sexual Abuse of a Child, as charged in Count V of the indictment, has four elements, which are:

One, that on or about between the 1st day of March 2011, and the 28th day of February, 2013, Shannon White Buffalo knowingly caused or knowingly attempted to cause K.L.H.B. to engage in a sexual act, as the term is defined in Instruction 14;

Two, that K.L.H.B. had not attained the age of 12 at the time of the sexual act;

Three, that Shannon White Buffalo is an Indian; and

Four, that the offense took place in Indian country.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in Count V of the indictment, otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

The crime of Abusive Sexual Contact, as charged in Count VI of the indictment, has five elements, which are:

***One*, that on or about between the 1st day of March, 2011, and the 28th day of February, 2013, Shannon White Buffalo did knowingly and intentionally engage in, or attempt to engage in, sexual contact, as the term is defined in Instruction 15, with K.L.H.B.;**

***Two*, that at the time of such conduct, K.L.H.B. had not attained the age of 12 years;**

***Three*, that the sexual contact was done with an intent to abuse, humiliate, harass, or degrade K.L.H.B., or to arouse or gratify the sexual desire of Shannon White Buffalo;**

***Four*, that Shannon White Buffalo is an Indian; and**

***Five*, that the offense took place in Indian Country.**

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in Count VI of the indictment, otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 13

The crime of Abusive Sexual Contact, as charged in Count VII of the indictment, has five elements, which are:

***One*, that on or about between the 1st day of January, 2013, and the 31st day of March, 2013, Shannon White Buffalo did knowingly and intentionally engage in, or attempt to engage in, sexual contact, as the term is defined in Instruction 15, with R.V.;**

***Two*, that at the time of such conduct, R.V. had not attained the age of 12 years;**

***Three*, that the sexual contact was done with an intent to abuse, humiliate, harass, or degrade R.V., or to arouse or gratify the sexual desire of Shannon White Buffalo**

***Four*, that Shannon White Buffalo is an Indian; and**

***Five*, that the offense took place in Indian country.**

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in Count VII of the indictment, otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 14

The term "sexual act" as used within Counts I, III, and V of the indictment means—

- (a) contact between the penis and the vulva, and for purposes of these instructions contact involving the penis occurs upon penetration, however, slight;
- (b) contact between the mouth and the penis, the mouth and the vulva;
- (c) the penetration, however slight, of the genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- (d) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

INSTRUCTION NO. 15

The term "sexual contact," as used in Counts II, IV, VI, and VII of the indictment, 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, or degrade her or with the intent to arouse or gratify the sexual desire of any person.

INSTRUCTION NO. 16

The home at 27231 Two Kettle Road in Mellette County is, and was during the relevant time periods, within what is considered "Indian country." It is for you to decide whether the defendant committed any of the offenses charged and, if so, whether any such offenses occurred at 27231 Two Kettle Road in Mellette County.

INSTRUCTION NO. 17

A person is considered an "Indian" if that person has some Indian blood and if the person is recognized as an Indian. A person is generally recognized to be an "Indian" if that person is enrolled as a member in a federally recognized Indian tribe. The Rosebud Sioux Tribe is a federally recognized Indian tribe.

INSTRUCTION NO. 18

The crimes charged in Counts I through VII include an attempt to engage in sexual acts or sexual contacts. A defendant may be found guilty of an attempt if he intended to cause the alleged victim to engage in the sexual act or sexual contact as alleged in an indictment and if he voluntarily and intentionally carried out some act which was a substantial step toward that act.

A substantial step, as used in this instruction, 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.

INSTRUCTION NO. 19

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 the 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. 20

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 the defendant’s acts and words, along with all the evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 21

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. 22

You will note that the indictment charges that offenses were allegedly committed "on or about" certain dates. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the case establishes beyond a reasonable doubt that the offenses were committed on a date or dates reasonably near the dates alleged.

INSTRUCTION NO. 23

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

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, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

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

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, 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.

Fifth, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Sixth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. 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 bailiff that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA</p> <p>Plaintiff,</p> <p>-vs-</p> <p>SHANNON WHITE BUFFALO,</p> <p>Defendant.</p>	<p>13-30149-RAL</p> <p>VERDICT FORM</p>
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find Defendant Shannon White Buffalo _____ (fill in either "not guilty" or "guilty") of Aggravated Sexual Abuse of a Child as charged in Count I of the indictment.
2. We find Defendant Shannon White Buffalo _____ (fill in either "not guilty" or "guilty") of Abusive Sexual Contact as charged in Count II of the indictment.
3. We find Defendant Shannon White Buffalo _____ (fill in either "not guilty" or "guilty") of Sexual Abuse of a Minor as charged in Count III of the indictment.
4. We find Defendant Shannon White Buffalo _____ (fill in either "not guilty" or "guilty") of Abusive Sexual Contact as charged in Count IV of the indictment.
5. We find Defendant Shannon White Buffalo _____ (fill in either "not guilty" or "guilty") of Aggravated Sexual Abuse of a Child as charged in Count V of the indictment.

6. We find Defendant Shannon White Buffalo _____ (fill in either "not guilty" or "guilty") of Abusive Sexual Contact as charged in Count VI of the indictment.

7. We find Defendant Shannon White Buffalo _____ (fill in either "not guilty" or "guilty") of Abusive Sexual Contact as charged in Count VII of the indictment.

Dated September ____, 2014

Foreperson