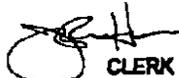


**FILED**

APR 03 2009

  
CLERK

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

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 08-50033-01-KES

vs.

**FINAL  
INSTRUCTIONS  
TO THE JURY**

ANGELO PEREZ,

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 superseding indictment charges that, on or about the 9<sup>th</sup> day of December, 2007, near Porcupine, in Indian country, in the District of South Dakota, the defendant, Angelo Perez, an Indian, did knowingly cause and attempt to cause [REDACTED] to engage in a sexual act, to-wit: contact between the penis and the vulva, by the use of force against [REDACTED]

***Elements***

For you to find Angelo Perez guilty of aggravated sexual abuse as charged in Count 1 of the superseding indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt.

**One, that on or about December 9, 2007, Mr. Perez caused [REDACTED] to engage in a sexual act or attempted to do so;**

The term "sexual act" as used within these instructions means contact between the penis and the vulva, and, for purposes of these instructions, 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 Mr. Perez did so by using force against ██████████;**

**Three, that Mr. Perez 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.

**Four and five, that Mr. Perez is an Indian, and that the offense took place in Indian country, namely near Porcupine, South Dakota.**

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 Porcupine, 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 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, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

***Lesser Included Offense - Abusive Sexual Contact***

If your verdict under this instruction is not guilty of aggravated sexual abuse, or if after all reasonable efforts you are unable to reach a verdict on Count 1 of the superseding indictment, 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 1 of the superseding indictment, has the following five essential elements:

**One, that on or about December 9, 2007, Mr. Perez engaged in, or attempted to engage in, sexual contact with .**

The term "attempt" was explained previously within this instruction.

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

**Two, that Mr. Perez did so by using force against .**

**Three, that Mr. Perez did such acts knowingly;**

The term "knowingly" was explained previously within this instruction.

**Four and five, that Mr. Perez is an Indian, and that the offense took place in Indian country, namely near Porcupine, South Dakota.**

For you to find the defendant guilty of abusive sexual contact as charged in Count 1 of the superseding indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

***Lesser Included Offense - Simple Assault***

If your verdict as to Count 1 under this instruction is not guilty of aggravated sexual abuse, or if after all reasonable efforts, you are unable to reach a verdict on Count 1 of the superseding indictment, and your verdict under this instruction is not guilty of abusive sexual contact, or if, after all reasonable efforts, you are unable to reach a verdict on the offense of abusive sexual contact, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of simple assault. The crime of simple assault, a lesser included offense of the crime charged in Count 1 of the superseding indictment, has the following three essential elements:

***One, that on or about December 9, 2007, Mr. Perez assaulted***

***[REDACTED]; and***

An "assault" is any intentional and voluntary attempt or threat to do injury to the person of another, when coupled with the apparent present ability to do so sufficiently to put the person against whom the attempt is made in fear of immediate bodily harm.

***Two and three, that Mr. Perez is an Indian, and that the offense took place in Indian Country, namely near Porcupine, South Dakota.***

For you to find the defendant guilty of the crime of simple assault, the government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

FINAL INSTRUCTION NO. 3 – COUNT 2 - SEXUAL ABUSE

Count 2 of the superseding indictment charges that, on or about the 9<sup>th</sup> day of December, 2007, near Porcupine, in Indian country, in the District of South Dakota, the defendant, Angelo Perez, an Indian, did knowingly engage, and attempt to engage, in a sexual act with [REDACTED], at a time when [REDACTED] was physically incapable of declining participation in and communicating an unwillingness to engage in the sexual act.

***Elements***

For you to find Angelo Perez guilty of sexual abuse as charged in Count 2 of the superseding indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt.

**One, that on or about December 9, 2007, Mr. Perez knowingly engaged in or attempted to engage in a sexual act with [REDACTED]**

The terms “sexual act” and “knowingly” were defined for you in Final Instruction Number 2. The crime of an attempt to commit a crime was also defined for you in Final Instruction Number 2.

**Two, that at the time of the alleged offense, [REDACTED] was physically incapable of declining participation in or communicating an unwillingness to engage in the sexual act;**

**Three and four, that Mr. Perez is an Indian; and that the offense took place in Indian country, namely near Porcupine, 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, near Porcupine, is in Indian country.

For you to find the defendant guilty of sexual abuse, the government must prove all of these essential elements beyond a reasonable doubt.

Otherwise, you must find the defendant not guilty of this offense.

***Lesser Included Offense - Abusive Sexual Contact***

If your verdict under this instruction is not guilty of sexual abuse, or if after all reasonable efforts you are unable to reach a verdict on Count 2 of the superseding indictment, 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 2 of the superseding indictment, has the following four essential elements:

**One, that on or about December 9, 2007, Mr. Perez knowingly engaged in, or attempted to engage in, sexual contact with [REDACTED]**

[REDACTED]

The terms "knowingly," "attempt," and "sexual contact" were previously explained in Final Instruction Number 2.

**Two, that at the time of the alleged offense, [REDACTED] was physically incapable of declining participation in or communicating an unwillingness to engage in the sexual contact;**

**Three and four, that Mr. Perez is an Indian, and that the offense took place in Indian country, namely near Porcupine, South Dakota.**

For you to find the defendant guilty of abusive sexual contact as charged in Count 2 of the superseding indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

***Lesser Included Offense - Simple Assault***

If your verdict as to Count 2 under this instruction is not guilty of sexual abuse, or if after all reasonable efforts, you are unable to reach a verdict on Count 2 of the superseding indictment, and your verdict under this instruction is not guilty of abusive sexual contact, or if, after all reasonable efforts, you are unable to reach a verdict on the offense of abusive sexual contact, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of simple assault. The crime of simple assault,

FINAL INSTRUCTION NO. 4 – COUNT 3 - SEXUAL ABUSE OF A MINOR

Count 3 of the superseding indictment charges that, on or about the 9<sup>th</sup> day of December, 2007, near Porcupine, in Indian country, in the District of South Dakota, the defendant, Angelo Perez, an Indian, did knowingly engage and attempt to engage in a sexual act with ██████████ a person who had attained the age of 12 years but had not attained the age of 16 years, and was at least four years younger than Angelo Perez.

***Elements***

For you to find Angelo Perez guilty of sexual abuse of a minor as charged in Count 3 of the superseding indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt.

***One, that on or about December 9, 2007, Mr. Perez knowingly engaged in or attempted to engage in a sexual act with ██████████***

The terms “sexual act” and “knowingly” were defined for you in Final Instruction Number 2. The crime of an attempt to commit a crime was also defined for you in Final Instruction Number 2.

***Two, that at the time of the alleged offense, ██████████ had attained the age of 12 years, but had not attained the age of 16 years;***

The government need not prove that the defendant knew the age of ██████████

**Three, that [REDACTED] was at least four years younger than Mr. Perez;**

The government need not prove that the defendant knew that the requisite age difference existed between himself and [REDACTED]

**Four and five, that Mr. Perez is an Indian, and that the offense took place in Indian country, namely near Porcupine, 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, near Porcupine, is in Indian country.

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

***Lesser Included Offense - Abusive Sexual Contact***

If your verdict under this instruction is not guilty of sexual abuse, or if after all reasonable efforts you are unable to reach a verdict on Count 3 of the superseding indictment, 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 3 of the superseding indictment, has the following five essential elements:

**One, that on or about December 9, 2007, Mr. Perez knowingly engaged in, or attempted to engage in, sexual contact with [REDACTED]**

The terms “knowingly,” “attempt” and “sexual contact” were previously explained in Final Instruction Number 2.

**Two, that at the time of the alleged offense, [REDACTED] had attained the age of 12 years, but had not attained the age of 16 years;**

**Three, that [REDACTED] was at least four years younger than Mr. Perez;**

**Four and five, that Mr. Perez is an Indian, and that the offense took place in Indian country, namely near Porcupine, South Dakota.**

For you to find the defendant guilty of abusive sexual contact as charged in Count 3 of the superseding indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

***Lesser Included Offense - Simple Assault***

If your verdict as to Count 3 under this instruction is not guilty of sexual abuse of a minor, or if after all reasonable efforts, you are unable to reach a

verdict on Count 3 of the superseding indictment, and your verdict under this instruction is not guilty of abusive sexual contact, or if, after all reasonable efforts, you are unable to reach a verdict on the offense of abusive sexual contact, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of simple assault. The crime of simple assault, a lesser included offense of the crime charged in Count 3 of the superseding indictment, has the following three essential elements:

**One, that on or about December 9, 2007, Mr. Perez assaulted**

**[REDACTED], and**

The term "assault" has been previously explained in Final Instruction Number 2.

**Two and three, that Mr. Perez is an Indian, and that the offense took place in Indian Country, namely near Porcupine, South Dakota.**

For you to find the defendant guilty of the crime of simple assault, the government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

FINAL INSTRUCTION NO. 5 - THEORY OF DEFENSE

Angelo Perez's theory of the defense is that [REDACTED] is not correct in her allegations against Angelo Perez, and that sexual inappropriateness, if any, was between [REDACTED] and [REDACTED].

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

Angelo Perez 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 Angelo Perez has committed each and every element of each offense charged in the superseding indictment against him, you must find him not guilty of that offense.

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

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 an 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.

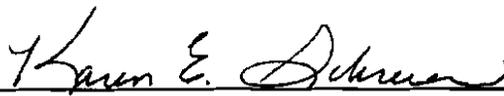
*Second*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

*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 April 2, 2009.

  
\_\_\_\_\_  
Karen E. Schreier  
Chief Judge