

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

JUL 23 2009


CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROMAN WHITE CALF,

Defendant.

No. CR 08-50098-01-KES

**FINAL
INSTRUCTIONS
TO THE JURY**

TABLE OF CONTENTS

FINAL INSTRUCTIONS

NO. 1 – INTRODUCTION	1
NO. 2 – SEXUAL ABUSE OF A MINOR	2
NO. 3 – DEFENSE	4
NO. 3a – INTOXICATION DEFENSE	5
NO. 4 – IMPEACHMENT	6
NO. 5 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF	7
NO. 6 – REASONABLE DOUBT	8
NO. 7 – DUTY TO DELIBERATE	9
NO. 8 – DUTY DURING DELIBERATIONS	11

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 – SEXUAL ABUSE OF A MINOR

The indictment charges that on or about June 30, 2008, at Pine Ridge, South Dakota, in Indian Country, in the District of South Dakota, the defendant, Roman White Calf, an Indian, did knowingly engage, and attempt to engage, in a sexual act with [REDACTED] a child who had attained the age of twelve years, but who had not attained the age of sixteen years, and who was at least four years younger than defendant, Roman White Calf.

Elements

For you to find Roman White Calf guilty of the offense charged in the indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that on or about the 30th day of June, 2008, Roman White Calf did knowingly engage, or attempt to engage, in a sexual act with [REDACTED]

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.

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 sexual abuse of a minor and voluntarily and intentionally carried out some act which was a substantial step toward engaging in sexual abuse of a minor.

FINAL INSTRUCTION NO. 3 – DEFENSE

In a prosecution for sexual abuse of a minor, it is a defense that the defendant reasonably believed that the other person had attained the age of 16 years. With regard to this defense, the burden is on the defendant to prove by a preponderance of the evidence that he reasonably believed [REDACTED] [REDACTED] had attained the age of 16 years at the time they engaged in the alleged sexual act. There is no burden on the United States to prove either that the defendant knew the age of [REDACTED] or that defendant knew that a four-year age difference existed between him and [REDACTED] when they engaged in the alleged sexual act.

To prove something by a preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding what evidence is more believable. If, on this issue, the evidence is equally balanced, you cannot find that issue has been proved by a preponderance of the evidence.

If you find that the defendant has proved by a preponderance of the evidence that he reasonably believed [REDACTED] had attained the age of 16 years at the time they engaged in the sexual act, you must find the defendant not guilty of sexual abuse of a minor as charged in the indictment.

FINAL INSTRUCTION NO. 3a – INTOXICATION DEFENSE

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

With regard to the crime of sexual abuse of a minor, it is not necessary that the government prove that the defendant intended to commit the crime of sexual abuse of a minor. The government must prove beyond a reasonable doubt that the defendant knowingly engaged in a sexual act with [REDACTED]

[REDACTED] Therefore, the fact that the defendant may have been intoxicated is not to be considered by you in determining whether he committed the crime of sexual abuse of a minor.

With regard to the crime of attempt to sexually abuse a minor, the government must prove that the defendant intended to commit the crime of sexual abuse of a minor. 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 intent to commit the crime. Evidence that defendant 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 the intent to commit the crime of sexual abuse of a minor.

FINAL INSTRUCTION NO. 4 – 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 has said or done something, or has 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.

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. 5 –
PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

Roman White Calf 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 Roman White Calf has committed each and every element of the offense charged in the indictment against him, you must find him not guilty of that offense.

FINAL INSTRUCTION NO. 6 – 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. 7 – 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. 8 – 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.

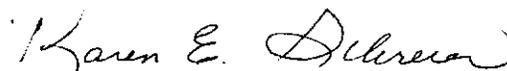
Second, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

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 July 23, 2009.



Karen E. Schreier
Chief Judge