

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

FILED

FEB - 3 2010


CLERK

CENTRAL DIVISION

UNITED STATES OF AMERICA,

*

CR. 09-30053-RAL

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Plaintiff,

*

REDACTED

*

FINAL INSTRUCTIONS

-vs-

*

TO JURY

*

ANTONIO DIAZ LEFT HAND BULL,

*

*

Defendant.

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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.

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.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, 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 -- this 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.

INSTRUCTION NO. 5

The indictment in this case charges that the defendant committed the crime of aggravated sexual abuse. The defendant has pleaded not guilty to that charge.

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 crime charged.

There is no burden upon a defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 6

The crime of aggravated sexual abuse, as charged in Count 1 of the indictment, has five elements, which are:

One, that on or about the 8th day of March, 2009, Mr. Left Hand Bull caused (name redacted), to engage in a sexual act or attempted to do so;

The term "sexual act," as it applies to Count 1 of the indictment, 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. Left Hand Bull did so by using force against (name redacted);

The element of "force," as it applies to Count 1 of the indictment, means the use of such force as is sufficient to overcome or restrain a person; or the use of a threat of harm sufficient to coerce or compel submission by the victim.

Three, that Mr. Left Hand Bull 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, that Mr. Left Hand Bull is an Indian; and

Five, that the offense took place in Indian country, namely, Todd County, South Dakota.

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; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 7

The crime of aggravated sexual abuse, as charged in Count 2 of the indictment, has five elements, which are:

One, that on or about the 8th day of March, 2009, Mr. Left Hand Bull caused (name redacted), to engage in a sexual act or attempted to do so;

The term "sexual act," as it applies to Count 2 of the indictment, means contact between the penis and the anus, 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. Left Hand Bull did so by using force against (name redacted);

The element of "force," as it applies to Count 2 of the indictment, means the use of such force as is sufficient to overcome or restrain a person; or the use of a threat of harm sufficient to coerce or compel submission by the victim.

Three, that Mr. Left Hand Bull 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, that Mr. Left Hand Bull is an Indian; and

Five, that the offense took place in Indian country, namely, Todd County, South Dakota.

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; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 8

If, and only if, your verdict as to Count 1 or Count 2 is not guilty of aggravated sexual abuse, or if after all reasonable efforts, you are unable to reach a verdict on Count 1 or Count 2 of the indictment, 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 crimes charged in the indictment, has the following three essential elements:

One, that on or about the 8th day of March, 2009, Mr. Left Hand Bull assaulted (name redacted); and

A “simple assault” is any intentional or knowing harmful or offensive bodily touching or contact, however slight, without justification or excuse, with another’s person, regardless of whether physical harm in intended or inflicted. It is not necessary that the person have a reasonable apprehension of bodily harm.

Two, that Mr. Left Hand Bull is an Indian; and

Three, that the offense took place in Indian country, namely, Todd County, 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.

INSTRUCTION NO. 9

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 10

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 specific intent to attempt to commit the act charged. 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 such specific intent.

INSTRUCTION NO. 11

The Government must prove by the greater weight of the evidence that the offense charged was begun, continued or completed in the District of South Dakota.

To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. This is a lesser standard than proof beyond a reasonable doubt. The requirement of proof beyond a reasonable doubt applies to all other issues in the case.

INSTRUCTION NO. 12

The indictment in this case alleges that the defendant is an Indian and that the alleged offense occurred in Indian country. The existence of those two factors is necessary in order for this Court to have jurisdiction over the crime charged in the indictment.

Counsel for the Government, 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 is claimed to have occurred is in Indian country.

The defendant has not, by entering this agreement or stipulation, admitted his guilt of the offense charged, and you may not draw any inference of guilty from the stipulation. The only effect of this stipulation is to establish the facts that the defendant is an Indian and that the place where the alleged offense is claimed to have occurred is in Indian country.

INSTRUCTION NO. 13

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, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not 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 bailiff that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

ANTONIO DIAZ LEFT HAND BULL,

Defendant.

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CR. 09-30053-RAL

VERDICT FORM

We, the jury, duly empaneled and sworn to try the issues in this case find as follows:

1. We find Defendant Antonio Diaz Left Hand Bull _____ (fill in either "guilty" or "not guilty") of aggravated sexual abuse as charged in Count 1 of the indictment.

2. *[Answer if, and only if, you found the Defendant "not guilty" as to Count 1. If you found the Defendant guilty as to Count 1, then leave this blank].* We find Defendant Antonio Diaz Left Hand Bull _____ (fill in either "guilty" or "not guilty") of the offense of simple assault.

3. We find Defendant Antonio Diaz Left Hand Bull _____ (fill in either "guilty" or "not guilty") of aggravated sexual abuse as charged in Count 2 of the indictment.

4. *[Answer if, and only if, you found the Defendant "not guilty" as to Count 2. If you found the Defendant guilty as to Count 2, then leave this blank].* We find Defendant Antonio Diaz Left Hand Bull _____ (fill in either "guilty" or "not guilty") of the offense of simple assault.

Dated February ___, 2010

Foreperson

