

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

**FILED**

JUL 07 2011

  
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 09-50051-01-KES

vs.

**FINAL  
INSTRUCTIONS  
TO THE JURY**

GILLMAN RODDY LONG, a/k/a  
DAVE GILLMAN LONG,

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 indictment charges that between on or about January 20, 2008, and January 25, 2008, at Pine Ridge, in Shannon County, in Indian country, in the District of South Dakota, the defendant, Gillman Roddy Long, a/k/a Dave Gillman Long, an Indian, did knowingly engage and attempt to engage in a sexual act with [REDACTED], 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 Gillman Roddy Long, a/k/a Dave Gillman Long, by using force against [REDACTED]

***Elements***

For you to find Gillman Roddy Long, a/k/a Dave Gillman Long, guilty of the offense of aggravated sexual abuse of a child as charged in **Count 1** of the indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

**One, that between on or about January 20, 2008, and January 25, 2008, Gillman Roddy Long, a/k/a Dave Gillman Long, did engage, or attempt to engage, in a sexual act with [REDACTED];**

The term "sexual act" means contact between the penis and the vulva, or the penis and the anus, and for purposes of these instructions contact involving the penis occurs upon penetration, however slight; contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; the penetration, however slight, of the anal or 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 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 arouse or gratify the sexual desire of any person.

The term "vulva" is defined as the external parts of the female genital organs.

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 Gillman Roddy Long, a/k/a Dave Gillman Long, did so by using force against [REDACTED];**

**Three, that Gillman Roddy Long, a/k/a Dave Gillman Long, 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 at the time of the offense [REDACTED] had attained the age of 12 years but had not yet attained the age of 16 years and was at least four years younger than Gillman Roddy Long, a/k/a Dave Gillman Long;**

**Five, that Gillman Roddy Long, a/k/a Dave Gillman Long, is an Indian; and**

A person is considered an "Indian" if that person has some Indian blood and if that person is recognized as an Indian. To determine whether the person is recognized as an Indian, you may consider the following factors:

- 1) Whether the person is enrolled in a tribe.
- 2) Whether the government has provided the person with assistance reserved only to Indians.

- 3) Whether the person enjoys the benefits of tribal affiliation.
- 4) Whether the person is socially recognized as an Indian because he lives on the reservation and participates in Indian social life.

**Six, that the offense took place in Indian country, namely, at Pine Ridge, in Shannon County.**

The term "Indian country," includes: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

For you to find the defendant guilty of aggravated sexual abuse of a child, as charged in the indictment, the prosecution must prove all of the essential elements beyond a reasonable doubt. Otherwise, you must find him not guilty.

FINAL INSTRUCTION NO. 3 – COUNT 2 –AGGRAVATED SEXUAL ABUSE

**Count 2** of the indictment charges that on or about February 14, 2008, at Pine Ridge, in Shannon County, in Indian country, in the District of South Dakota, the defendant, Gillman Roddy Long, a/k/a Dave Gillman Long, an Indian, did knowingly engage and attempt to engage in a sexual act with [REDACTED], 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 Gillman Roddy Long, a/k/a Dave Gillman Long, by using force against [REDACTED].

***Elements***

For you to find Gillman Roddy Long, a/k/a Dave Gillman Long, guilty of the offense of aggravated sexual abuse of a child as charged in **Count 2** of the indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

**One, that on or about February 14, 2008, Gillman Roddy Long, a/k/a Dave Gillman Long, did engage, or attempt to engage, in a sexual act with [REDACTED];**

The terms “sexual act” and “attempt” were defined for you in Final Instruction Number 2.

**Two, that Gillman Roddy Long, a/k/a Dave Gillman Long, did so by using force against [REDACTED];**

**Three, that Gillman Roddy Long, a/k/a Dave Gillman Long, did such acts knowingly;**

The term "knowingly" was defined for you in Final Instruction Number 2.

**Four, that at the time of the offense [REDACTED] had attained the age of 12 years but had not yet attained the age of 16 years, and was at least four years younger than Gillman Roddy Long, a/k/a Dave Gillman Long;**

**Five, that Gillman Roddy Long, a/k/a Dave Gillman Long, is an Indian; and**

The term "Indian" was defined for you in Final Instruction Number 2.

**Six, that the offense took place in Indian country, namely, at Pine Ridge, in Shannon County.**

The term "Indian"<sup>(Country)</sup> was defined for you in Final Instruction Number 2.

For you to find the defendant guilty of aggravated sexual abuse of a child, as charged in the indictment, the prosecution must prove all of the essential elements beyond a reasonable doubt. Otherwise, you must find him not guilty.

FINAL INSTRUCTION NO. 4 – COUNT 3 –AGGRAVATED SEXUAL ABUSE

**Count 3** of the indictment charges that between on or about March 1, 2008, and March 31, 2008, at Pine Ridge, in Shannon County, in Indian country, in the District of South Dakota, the defendant, Gillman Roddy Long, a/k/a Dave Gillman Long, an Indian, did knowingly engage and attempt to engage in a sexual act, to-wit: contact between the penis and the vulva, with [REDACTED], 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 Gillman Roddy Long, a/k/a Dave Gillman Long, by using force against [REDACTED].

***Elements***

For you to find Gillman Roddy Long, a/k/a Dave Gillman Long, guilty of the offense of aggravated sexual abuse of a child as charged in **Count 3** of the indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

**One, that between on or about March 1, 2008, and March 31, 2008, Gillman Roddy Long, a/k/a Dave Gillman Long, did engage, or attempt to engage, in a sexual act , to-wit: contact between the penis and the vulva, with [REDACTED];**

The term “sexual act” for purpose of this instruction means contact between the penis and the vulva which occurs upon penetration, however slight.

The terms “vulva,” “attempt,” and “substantial step” were defined for you in Final Instruction Number 2.



**Two, that Gillman Roddy Long, a/k/a Dave Gillman Long, did so by using force against [REDACTED];**

**Three, that Gillman Roddy Long, a/k/a Dave Gillman Long, did such acts knowingly;**

The term "knowingly" was defined for you in Final Instruction Number 2.

**Four, that at the time of the offense [REDACTED] had attained the age of 12 years but had not yet attained the age of 16 years, and was at least four years younger than Gillman Roddy Long, a/k/a Dave Gillman Long;**

**Five, that Gillman Roddy Long, a/k/a Dave Gillman Long, is an Indian; and**

The term "Indian" was defined for you in Final Instruction Number 2.

**Six, that the offense took place in Indian country, namely, at Pine Ridge, in Shannon County.**

The term "Indian country" was defined for you in Final Instruction Number 2.

For you to find the defendant guilty of aggravated sexual abuse of a child, as charged in the indictment, the prosecution must prove all of the essential elements beyond a reasonable doubt. Otherwise, you must find him not guilty.

FINAL INSTRUCTION NO. 5 – THEORY OF DEFENSE

Defendant's theory of defense is that the United States has not proven all the elements of the crimes charged against him.

FINAL INSTRUCTION NO. 6 – CHARACTER AND REPUTATION

You have heard testimony about the character and reputation of [REDACTED] and [REDACTED] for truthfulness or untruthfulness. You may consider this evidence only in deciding whether to believe the testimony of [REDACTED] and [REDACTED] and how much weight to give to it.

FINAL INSTRUCTION NO. 7 – UNCHARGED ALLEGATIONS

You have heard evidence that the defendant allegedly attempted or did have sexual contact with other persons not named in the indictment. If you believe this evidence, this does not mean that defendant is guilty of any of the charges to which he has pled not guilty in this case which you will be deciding. You may give such evidence no weight or such weight as you think it is entitled to receive. This evidence is received for a limited purpose only.

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. 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

Gillman Roddy Long, a/k/a Dave Gillman Long, 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. Therefore, the fact that the defendant did not testify must not be discussed or considered by you in any way when deliberating and arriving at your verdict. 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 Gillman Roddy Long, a/k/a Dave Gillman Long, has committed each and every element of the offenses charged in the 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. 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 – 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



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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. 12 – 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 7, 2011.

  
Karen E. Schreier  
Chief Judge