

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

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CLERK

UNITED STATES OF AMERICA,)	CR. 10-50082-JLV
)	
Plaintiff,)	
)	FINAL INSTRUCTIONS
vs.)	TO THE JURY
)	(REDACTED)
LEO VILLARREAL,)	
)	
Defendant.)	

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FINAL INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and any oral instructions I gave you during the trial remain in effect. All instructions, whenever given and whether in writing or not, are equally binding on you and must be followed.

The final instructions I am about to give you are in writing and will be available to you in the jury room. These instructions explain the law that applies to this case. You must consider my instructions as a whole and not single out some instructions and ignore others.

FINAL INSTRUCTION NO. 2 - DUTY OF JURORS

This is a criminal case brought by the United States government against the defendant, Leo Villarreal. The defendant is charged with the offenses of aggravated sexual abuse and sexual abuse. Your duty is to decide from the evidence whether the defendant is not guilty or guilty of each offense charged against him. You will find the facts from the evidence presented in court. "Evidence" is defined in Final Instruction No. 12. You are entitled to consider that evidence in light of your own observations and experiences. You may use reason and common sense to draw conclusions from facts established by the evidence. You will then apply the law, which I give you in these instructions, to the facts to reach your verdict. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with the law or not.

It is vital to the administration of justice that each of you faithfully perform your duties as jurors. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict based solely on the evidence, your common sense, and the law as I give it to you. Do not take anything I said or did during the trial as an indication of what I think about the evidence or what I think your verdict should be. Do not conclude from any ruling or comment I made that I have any opinion on how you should decide the case.

Please remember only Mr. Villarreal, not anyone else, is on trial here.
Also, remember he is on trial only for the offenses charged against him, not for anything else.

FINAL INSTRUCTION NO. 3 - PRELIMINARY MATTERS

Each offense consists of “elements” which the government must prove beyond a reasonable doubt in order to convict the defendant of that offense. To help you evaluate the evidence, I will give you the elements that make up each offense. However, I must first explain some preliminary matters.

The charges against the defendant are set out in an indictment. An indictment is simply an accusation. It is not evidence of anything. The defendant pled not guilty to the charges brought against him. Therefore, the defendant is presumed to be innocent unless and until the government proves, beyond a reasonable doubt, each element of an offense charged.

The indictment charges the offenses were committed “on or about” a certain date. The government does not have to prove with certainty the exact date of an offense charged. It is sufficient if the evidence establishes that an offense occurred within a reasonable time of the date alleged in the indictment.

In the next three instructions, I will give you the elements for each offense charged in the indictment. Keep in mind that each count charges a separate offense. You must consider each count separately and return a separate verdict for each count.

FINAL INSTRUCTION NO. 4 - COUNT I: AGGRAVATED SEXUAL ABUSE

Elements

For you to find the defendant guilty of the offense of aggravated sexual abuse as charged in Count I of the indictment, the government must prove the following four essential elements beyond a reasonable doubt:

One, that on or about March 10, 2010, Leo Villarreal knowingly caused [REDACTED] to engage in a sexual act or attempted to do so;

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 in this instruction, means contact between the penis and the vulva. 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.

Two, that Mr. Villarreal did so by using force against [REDACTED]

[REDACTED];

The term “force” means the use or threatened use of a weapon; the use of physical force sufficient to overcome, restrain, or injure the alleged victim; a threat of harm sufficient to coerce or compel submission by the alleged victim; or the use of force sufficient to prevent the alleged victim from escaping the sexual act.

Three, that Mr. Villarreal is an Indian person as defined in Final Instruction No. 7; and

Four, that the offense took place at or near Manderson, South Dakota, in Indian country as defined in Final Instruction No. 8.

To find the defendant guilty of the offense of aggravated sexual abuse as charged in Count I of the indictment, the government must prove all four essential elements beyond a reasonable doubt. If the government fails to prove any essential element beyond a reasonable doubt, you must find the defendant not guilty of that offense.

FINAL INSTRUCTION NO. 5 - COUNT II: AGGRAVATED SEXUAL ABUSE

Elements

For you to find the defendant guilty of the offense of aggravated sexual abuse as charged in Count II of the indictment, the government must prove the following five essential elements beyond a reasonable doubt:

One, that on or about March 10, 2010, Leo Villarreal knowingly caused [REDACTED] to engage in a sexual act or attempted to do so;

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 in this instruction, means the intentional touching, not through the clothing, of the genitalia of [REDACTED] with an intent to abuse, humiliate, harass, or degrade [REDACTED] or to arouse or gratify the sexual desire of the defendant.

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.

Two, that Leo Villarreal did so by using force against [REDACTED]

[REDACTED];

The term “force” means the use or threatened use of a weapon; the use of physical force sufficient to overcome, restrain, or injure the alleged victim; a threat of harm sufficient to coerce or compel submission by the alleged victim; or the use of force sufficient to prevent the alleged victim from escaping the sexual act.

Three, that at the time of the offense, [REDACTED] had not reached the age of 16 years;

Four, that Leo Villarreal is an Indian person as defined in Final Instruction No. 7; and

Five, that the offense took place at or near Manderson, South Dakota, in Indian country as defined in Final Instruction No. 8.

To find the defendant guilty of the offense of aggravated sexual abuse as charged in Count II of the indictment, the government must prove all five essential elements beyond a reasonable doubt. If the government fails to prove any essential element beyond a reasonable doubt, you must find the defendant not guilty of that offense.

FINAL INSTRUCTION NO. 6 - COUNT III: SEXUAL ABUSE

Elements

For you to find the defendant guilty of the offense of sexual abuse as charged in Count III of the indictment, the government must prove the following four essential elements beyond a reasonable doubt:

One, that on or about March 10, 2010, Leo Villarreal knowingly engaged in or attempted to engage in a sexual act with Marissa Two Lance;

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 in this instruction, means the penetration, however slight, of the genital opening of Marissa Two Lance by the finger, with an intent to abuse, humiliate, harass, or degrade Marissa Two Lance or to arouse or gratify the sexual desire of the defendant.

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.

Two, that at the time of the offense, Marissa Two Lance was incapable of appraising the nature of the conduct or was physically incapable of declining participation in or communicating unwillingness to engage in the sexual act;

Three, that Leo Villarreal is an Indian person as defined in Final Instruction No. 7; and

Four, that the offense took place at or near Manderson, South Dakota, in Indian country as defined in Final Instruction No. 8.

To find the defendant guilty of the offense of sexual abuse as charged in Count III of the indictment, the government must prove all four essential elements beyond a reasonable doubt. If the government fails to prove any essential element beyond a reasonable doubt, you must find the defendant not guilty of that offense.

FINAL INSTRUCTION NO. 7 - DEFINITION OF "INDIAN PERSON"

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.

It is not necessary that all of these factors be present. Rather, the jury is to consider all of the evidence in determining whether the government has proved beyond a reasonable doubt that the defendant is an Indian person.

FINAL INSTRUCTION NO. 8 - DEFINITION OF "INDIAN COUNTRY"

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; or (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; or (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

FINAL INSTRUCTION NO. 9 - DEFENSE

One of the issues in this case is whether the defendant was intoxicated at the time of the acts alleged in the indictment. Intoxication may be used to rebut evidence of specific intent where the offense charged is one requiring a specific intent to commit the offense. Regarding Counts I, II, or III, the defendant must have intended to attempt the offense charged. Regarding Count II, the defendant must have had the intent to intentionally touch, not through the clothing, the genitalia of [REDACTED] with an intent to abuse, humiliate, harass, or degrade [REDACTED] or to arouse or gratify the sexual desire of the defendant. Regarding Count III, the defendant must have had the intent to abuse, humiliate, harass, or degrade Marissa Two Lance or to arouse or gratify the sexual desire of the defendant. Also regarding Count III, the defendant must have known that Marissa Two Lance was incapable of appraising the nature of the conduct or was physically incapable of declining participation in or communicating unwillingness to engage in the sexual act. Evidence that the 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 engage in such conduct.

FINAL INSTRUCTION NO. 10 -

PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The defendant 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 he is here in court. The presumption of innocence remains with the defendant throughout the trial. This presumption alone is sufficient to find the defendant not guilty. The presumption of innocence may be overcome only if the government proves, beyond a reasonable doubt, each essential element of an offense charged.

The burden is always on the government to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant to prove his innocence, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The defendant is not even obligated to cross-examine the witnesses called to testify by the government. If the defendant did not testify, this fact must not be considered by you in any way or even discussed in arriving at your verdict.

Unless the government proves beyond a reasonable doubt that the defendant committed each and every essential element of an offense charged in the indictment, you must find him not guilty of that offense.

FINAL INSTRUCTION NO. 11 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence or lack of evidence produced during trial. 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 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 affairs of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

FINAL INSTRUCTION NO. 12 - DEFINITION OF EVIDENCE

I mentioned the word “evidence.” “Evidence” includes the testimony of witnesses and documents and other things received as exhibits. Certain things are *not* evidence. I shall list those things for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence. Opening statements and closing arguments by lawyers are not evidence.
2. Objections and rulings on 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. Anything you see or hear about this case outside the courtroom is not evidence.

The fact an exhibit was shown to you does not mean you must rely on it more than you rely on other evidence.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

The weight of the evidence is not determined by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the weight of the evidence should not be determined merely by the number or volume of documents or exhibits. The weight of evidence depends on its quality, not quantity. The quality and weight of the evidence are for you to decide.

FINAL INSTRUCTION NO. 13 - CREDIBILITY OF WITNESSES

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 says, 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 see or hear the things testified about; the witness's memory; any motives the witness may have for testifying a certain way; the behavior of the witness while testifying; whether the witness said something different at an earlier time; the witness's drug or alcohol use or addiction, if any; 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 people sometimes see or hear things differently and sometimes forget things. You need to consider whether a contradiction results from an innocent misrecollection or sincere lapse of memory or instead from an intentional falsehood or pretended lapse of memory.

Finally, just because a witness works in law enforcement or is employed by the government does not mean you should give more weight or credibility to the witness's testimony than you give to any other witness's testimony.

FINAL INSTRUCTION NO. 14 - IMPEACHMENT

In the last instruction, I instructed you generally on the credibility of witnesses. I now instruct you further on how the credibility of a witness may 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 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. 15 - EXPERTS

You may have heard testimony from a person described as an expert. Persons who, by knowledge, skill, training, education or experience, have become an expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

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.

FINAL INSTRUCTION NO. 19 - 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. He or she 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 government has proved its case beyond a reasonable doubt as to each offense charged in the indictment.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the court security officer, signed by one or more jurors. After conferring with the lawyers, I will respond as soon as possible, either in writing or orally in open court. Remember 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 you reach in this case. You will take this form to the jury room. When you have

unanimously agreed on the verdict, the foreperson will fill in the form, sign and date it, and advise the court security officer that you have reached a verdict. You will then return to the courtroom where your verdict will be received and announced.

Dated June 23rd, 2011.

BY THE COURT:



JEFFREY L. VIKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 10-50082-JLV
)	
Plaintiff,)	
)	
vs.)	VERDICT
)	
LEO VILLARREAL,)	
)	
Defendant.)	

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

- (1) We find the defendant Leo Villarreal _____ (fill in either “not guilty” or “guilty”) of Aggravated Sexual Abuse as charged in Count I of the indictment.
- (2) We find the defendant Leo Villarreal _____ (fill in either “not guilty” or “guilty”) of Aggravated Sexual Abuse as charged in Count II of the indictment.
- (3) We find the defendant Leo Villarreal _____ (fill in either “not guilty” or “guilty”) of Sexual Abuse as charged in Count III of the indictment.

Date

Foreperson