

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

PATRICK BROWN THUNDER,

Defendant.

*
*
*
*
*
*
*
*
*
*
*

11-30113-RAL

FINAL INSTRUCTIONS
TO JURY

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. The instructions I am about to give you now are in writing and will be available to you in the jury room.

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.

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, and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

There are two types of evidence from which you may find the truth as to the facts of the case—direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

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.

You should judge the testimony of the defendant and law enforcement officers in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 5

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education, or experience, has become an expert in some field may state opinions on matters in that field and may also state the reasons for those opinions.

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.

The Federal Rules of Evidence allow live video testimony in certain circumstances and if both parties consent to the procedure. You have heard the live video testimony of Dr. Richard Kaplan in this case. You may consider Dr. Richard Kaplan's testimony just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves. The fact that it was done by live video should not affect your judgment one way or the other.

INSTRUCTION NO. 6

The indictment in this case charges that the defendant committed the crimes of sexual abuse of a minor, two charges of sexual abuse, and kidnapping. The defendant has pleaded not guilty to all charges.

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 crimes charged.

INSTRUCTION NO. 7

The crime of Sexual Abuse of a Minor, as charged in Count I of the indictment, has five elements, which are:

One, that on or about between the 23rd day of April, 2005 and the 22nd day of April, 2006, Patrick Brown Thunder did knowingly engage, or knowingly attempt to engage, in a sexual act with A.C.;

The term “sexual act” as used in relation to Count I of the indictment, means contact between the penis and the vulva, and for the purposes of this subparagraph contact involving the penis occurs upon penetration, however slight.

Two, that at the time of such act, A.C. had attained the age of 12 years, but had not attained the age of 16 years;

Three, that A.C. was at least four years younger than Mr. Brown Thunder;

Four, that Mr. Brown Thunder is an Indian; and

Five, that the offense took place in Indian Country.

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 in Count I of the indictment, otherwise you must find the Defendant not guilty of this crime.

INSTRUCTION NO. 8

The crime of Sexual Abuse, as charged in Count II of the indictment, has five elements, which are:

One, that on or about the 28th day of March, 2008 and the 29th day of March, 2008, Patrick Brown Thunder engaged in a sexual act with H.C.;

The term “sexual act” as used in relation to Count II of the indictment, means contact between the penis and the vulva, and for the purposes of this subparagraph contact involving the penis occurs upon penetration, however slight.

Two, that at the time of such act, H.C. was incapable of appraising the nature of the conduct or was physically incapable of declining participation in, or communicating her unwillingness to engage in, that sexual act;

Three, that Mr. Brown Thunder committed such act knowingly;

Four, that Mr. Brown Thunder is an Indian; and

Five, that the offense took place in Indian Country.

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 in Count II of the indictment, otherwise you must find the Defendant not guilty of this crime.

INSTRUCTION NO. 9

The crime of Sexual Abuse, as charged in Count III of the indictment, has five elements, which are:

One, that on or about the 28th day of March, 2008 and the 29th day of March, 2008, Patrick Brown Thunder engaged in a sexual act with H.C.;

The term “sexual act” as used in relation to Count III of the indictment, means the penetration, however slight, of the genital opening of H.C. 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.

Two, that at the time of such act, H.C. was incapable of appraising the nature of the conduct or was physically incapable of declining participation in, or communicating her unwillingness to engage in, that sexual act;

Three, that Mr. Brown Thunder committed such act knowingly;

Four, that Mr. Brown Thunder is an Indian; and

Five, that the offense took place in Indian Country.

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 in Count III of the indictment, otherwise you must find the Defendant not guilty of this crime.

INSTRUCTION NO. 10

The crime of Kidnapping, as charged in Count IV of the indictment, has four elements, which are:

One, Patrick Brown Thunder unlawfully seized, confined, kidnapped, abducted, or carried away and held H.C. without her consent;

Two, Patrick Brown Thunder unlawfully seized, confined, kidnapped, abducted, or carried away and held H.C. for the purpose of committing sexual abuse;

Three, that Mr. Brown Thunder is an Indian; and

Four, that the offense took place in Indian Country

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 in Count IV of the indictment, otherwise you must find the Defendant not guilty of this crime.

INSTRUCTION NO. 11

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 the defendant's acts and words, along with all the evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 12

A person is considered an "Indian" if that person has some Indian ancestral blood and is a

member of a federally recognized Indian tribe.

INSTRUCTION NO. 13

The term "Indian country" includes all land within the limits of the Cheyenne River

Indian Reservation.

INSTRUCTION NO. 14

The crimes charged in Counts I, II, and III of the Indictment include an attempt to

commit a sexual act. A person may be found guilty of an attempt if he intended to cause the sexual act and voluntarily and intentionally carried out some act which was a substantial step toward that act.

A substantial step, as used in this instruction, 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.

INSTRUCTION NO. 15

You will note that the indictment charges that the offenses were committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the case establishes beyond a reasonable doubt that the offense was committed on a date or dates reasonably near the dates alleged.

INSTRUCTION NO.16

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 NO. 17

Intent may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in the determination of the defendant's intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

INSTRUCTION NO. 18

You have heard testimony that the defendant made statements to law enforcement agents. It is for you to decide:

First, whether the defendant made the statement; and

Second, if so, how much weight you should give to it.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statement may have been made.

INSTRUCTION NO. 19

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, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Sixth, 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,

*

11-30113-RAL

*

*

Plaintiff,

*

*

VERDICT FORM

-vs-

*

*

PATRICK BROWN THUNDER

*

*

Defendant.

*

*

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

1. We find Defendant Patrick Brown Thunder _____ (fill in either “not guilty” or “guilty”) of sexual abuse of a minor of A.C. as charged in Count I.

2. We find Defendant Patrick Brown Thunder _____ (fill in either “not guilty” or “guilty”) of sexual abuse of H.C. as charged in Count II.

3. We find Defendant Patrick Brown Thunder _____ (fill in either “not guilty” or “guilty”) of sexual abuse of H.C. as charged in Count III.

4. We find Defendant Patrick Brown Thunder _____ (fill in either “not guilty” or “guilty”) of kidnapping of H.C. as charged in Count IV.

Dated December ____, 2012

Foreperson