

**FILED**

JUL 18 2012

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CLERK

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT FORD,

Defendant.

No. CR 11-40116-01-KES

**FINAL  
INSTRUCTIONS  
TO THE JURY**

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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 – SEXUAL ABUSE OF AN  
INCAPACITATED PERSON

**Count 1** of the indictment charges that on or about June 30, 2011, at Flandreau, in Indian Country, in the District of South Dakota, Robert Ford did knowingly engage in or attempt to engage in a sexual act with Christina Weston, an Indian, who at the time 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.

***Elements***

For you to find Robert Ford guilty of Count 1 of the indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

***One, that on or about June 30, 2011, Robert Ford did knowingly engage in or attempt to engage in a sexual act with Christina Weston;***

For this offense, sexual act is defined as the penetration, however slight, of the anus or vulva, or both, by the penis.

The government is not required to prove that Robert Ford knew that his acts or omissions were unlawful. An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of Robert Ford's words, acts, or omissions, along with all the other evidence, in deciding whether he acted knowingly.

***Two, that Christina Weston was incapable of appraising the nature of the conduct, or alternatively was physically incapable of declining participation in or communicating unwillingness to engage in the sexual act;***

***Three, that Robert Ford knew that Christina Weston was incapable of appraising the nature of the conduct, or alternatively was physically incapable of declining participation in or communicating unwillingness to engage in the sexual act;***

***Four and five, that Christina Weston is an Indian; and that the offense took place in Indian Country, namely at Flandreau, in Indian Country, in the District of South Dakota.***

The United States and Robert Ford have stipulated—that is, they have agreed—that Christina Weston is an Indian and that the location where the crimes with which he is charged are said to have occurred in Indian Country. You must therefore treat those facts as having been proved.

However, these facts simply establish that the federal government has jurisdiction to prosecute these charges. Robert Ford has pled not guilty to the charges against him and it is the government's burden to prove otherwise at trial.

The crime charged in **Count 1** of the indictment includes an attempt to cause 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 the sexual act.

For you to find Robert Ford guilty of sexual abuse of an incapacitated person, as charged in **Count 1** of the indictment, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find him not guilty of this offense.

FINAL INSTRUCTION NO. 3 – COUNT 2 – KIDNAPPING

**Count 2** of the indictment charges that on or about June 30, 2011, at Flandreau, in Indian Country, in the District of South Dakota, Robert Ford, did unlawfully seize or confine Christina Weston, an Indian, for the purpose of preventing her from reporting a sexual attack.

***Elements***

For you to find Robert Ford guilty of **Count 2** of the indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

***One, Robert Ford unlawfully seized or confined Christina Weston without her consent;***

***Two, Robert Ford held Christina Weston for the purpose of preventing her from reporting a sexual attack;***

***Three and four, that Christina Weston is an Indian; and that the offense took place in Indian Country, namely at Flandreau, in Indian Country, in the District of South Dakota.***

As noted in Final Instruction Number 2, the United States and Robert Ford have agreed or stipulated that the Christina Weston is an Indian and that the place in Flandreau where the alleged offense is claimed to have occurred is within Indian Country.

For you to find Robert Ford guilty of kidnapping, as charged in **Count 2** of the indictment, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find him not guilty of this offense.

FINAL INSTRUCTION NO. 4 – PROOF OF KNOWLEDGE

Intent or knowledge 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 a determination of the defendant's knowledge or 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.

FINAL INSTRUCTION NO. 5 – EVIDENCE OF FLIGHT

The intentional flight of a defendant immediately after the commission of a crime, or after he is accused of a crime that has been committed, is not, of course, sufficient in itself to establish his guilt. But you may consider any evidence of flight by the defendant, along with all of the evidence in the case, in determining guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within the province of the jury.

In your consideration of the evidence of flight you should consider that there may be reasons for this which are fully consistent with innocence. These may include fear of being apprehended, unwillingness to confront the police, or reluctance to appear as a witness. Also, a sense of guilt does not necessarily reflect actual guilt.

FINAL INSTRUCTION NO. 6 – 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. 7 –  
PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

Robert Ford 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. This 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 the crimes 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 Robert Ford has committed each and every element of an offense charged in the indictment against him, you must find him not guilty of that offense.

FINAL INSTRUCTION NO. 8 – 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. 9 – TESTIMONY

Testimony of a rape victim herself, if believed beyond a reasonable doubt, is sufficient to support a finding of guilt.

## FINAL INSTRUCTION NO. 10 – 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 a 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. 11 – 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.

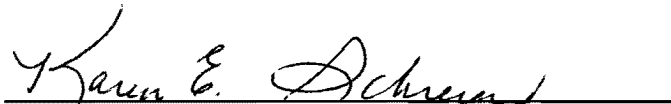
*Second*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the 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 court security officer that you are ready to return to the courtroom.

Dated July 18, 2012.

  
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Karen E. Schreier  
Chief Judge