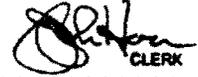


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
MAY 01 2013


CLERK

UNITED STATES OF AMERICA,

CR 12-10026

Plaintiff,

JURY INSTRUCTIONS

-vs-

JUAN RIVERA

Defendant.

INSTRUCTION NO. 1

Ladies and gentlemen of the jury, it is my duty now to explain the rules of law you must apply to this case.

You as jurors are the sole judges of the facts. But it is your duty to follow the law stated in these instructions, and to apply that law to the facts as you find them from the evidence before you. It would be a violation of your sworn duty to base your verdict upon any rules of law other than the ones given you in these instructions, regardless of your personal feelings as to what the law ought to be.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

INSTRUCTION NO. 2

You have been chosen and sworn as jurors to try the issues of fact presented by the allegations of the indictment and the denial made by the defendant in his plea of “not guilty.” You are to perform this duty without bias or prejudice, because the law does not permit jurors to be governed by sympathy or public opinion. The accused and the public expect that you will carefully and impartially consider all of the evidence and will follow the law as stated by the Court, in order to reach a just verdict, regardless of the consequences to any party.

INSTRUCTION NO. 3

The indictment in this case charges the defendant with the crime of aggravated sexual abuse. The defendant has pleaded not guilty to this 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. Therefore, the defendant, even though charged, begins the trial with no evidence against him. This 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 essential element of the crime charged.

There is no burden upon the defendant to prove that he is innocent.

INSTRUCTION NO. 4

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. 5

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.

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 and questions that I struck from the record, or told you to disregard, are not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

INSTRUCTION NO. 6

There are two types of evidence from which you may find the truth as to the facts of a 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.

INSTRUCTION NO. 7

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 in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 8

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of a greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

INSTRUCTION NO. 9

You have heard testimony that Juan Rivera made a statement to the Federal Bureau of Investigation. 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. This includes but is not limited to the fact that no portion of the interview was recorded or taped.

INSTRUCTION NO. 10

The crime of aggravated sexual abuse, as charged in the indictment, has four essential elements, which are:

1. On or about between October 30, 2002, and October 29, 2004, the defendant voluntarily and intentionally caused [REDACTED] to engage in a sexual act, namely contact between Juan Rivera's penis and [REDACTED] [REDACTED] vagina. Contact involving the penis occurs upon penetration, however slight.
2. At the time of the alleged offense, [REDACTED] had not attained the age of 12 years.
3. [REDACTED] is an Indian; and
4. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime as charged in the indictment, 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. 11

If you should unanimously find the defendant “Not Guilty” of the crime of aggravated sexual abuse as charged in the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in the indictment, then you must proceed to determine the guilt or innocence of the defendant as to the crime of abusive sexual contact under this instruction.

The crime of abusive sexual contact, a lesser included offense of the crime of aggravated sexual abuse as charged in the indictment, has four essential elements, which are:

1. On or about between October 30, 2002, and October 29, 2004, the defendant did voluntarily and intentionally cause or attempt to cause [REDACTED] to engage in sexual contact.
2. At the time of the alleged offense, [REDACTED] had not attained the age of twelve years.
3. [REDACTED] is an Indian; and
4. The alleged offense occurred in Indian country.

For you to find the defendant guilty of this crime, a lesser included offense of the crime of aggravated sexual abuse as charged in the indictment, the government must prove all of the essential elements of this lesser included offense beyond a reasonable doubt. Otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

Sexual contact includes the touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person. You must unanimously agree as to the contact involved in order to find that the defendant engaged in sexual contact.

INSTRUCTION NO. 13

Intent may be proved like anything else. You may consider any statements and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a 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. 14

The crime charged in the indictment includes an attempt to commit that crime. The defendant may be found guilty of an attempt if he intended to engage in the sexual activities alleged in the indictment and he knowingly and intentionally carried out some act which was a substantial step toward the commission of the alleged sexual activity.

INSTRUCTION NO. 15

The indictment charges that the offense was committed “on or about between” certain dates. The proof need not establish with certainty the exact date or dates of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date or dates reasonably near the date or dates alleged.

INSTRUCTION NO. 16

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

A verdict form has been prepared for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form to state the verdict upon which you unanimously agree, and then notify the marshal that you have a verdict.

INSTRUCTION NO. 17

The verdict must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 18

If you have questions, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury.

You will note from the oath about to be taken by the marshal that he, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached a unanimous verdict.

INSTRUCTION NO. 19

It is proper to add a final caution.

Nothing that I have said in these instructions—and nothing that I have said or done during the trial—has been said or done to suggest to you what I think your verdict should be.

What the verdict shall be is your exclusive duty and responsibility.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

UNITED STATES OF AMERICA,	*	CR 12-10026
	*	
Plaintiff,	*	
	*	
-vs-	*	VERDICT
	*	
JUAN RIVERA	*	
	*	
Defendant.	*	
	*	

Please return a verdict by placing an "X" in the space provided.

We, the jury in the above entitled action, as to the crime of aggravated sexual abuse, as charged in the indictment, find Juan Rivera:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Juan Rivera NOT GUILTY of the crime charged in the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in the indictment, then you must deliberate on the lesser included offense of abusive sexual contact and complete the following:

We, the jury in the above entitled action, as to the crime of abusive sexual contact, a lesser included offense of the crime charged in the indictment, find Juan Rivera:

_____ NOT GUILTY _____ GUILTY

Dated this _____ day of May, 2013.

Foreperson