

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of 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 – AGGRAVATED SEXUAL ABUSE OF A CHILD

For you to find Victor Dominquez guilty of aggravated sexual abuse of a child as charged in Count 1, the government must prove the following essential elements beyond a reasonable doubt:

One, that between on or about March 2006 and March 2012, Victor Dominquez did engage or attempt to engage in a sexual act, that is, the penetration, however slight, of the genital opening by a finger, with M.D. with an intent to arouse or gratify the sexual desire of any person;

For purposes of this charge, the term “sexual act” means the penetration, however slight, of M.D.’s genital opening by Mr. Dominquez’s finger.

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 offense. 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 offense and be of such a nature that a reasonable observer, viewing it in context, would conclude beyond a reasonable doubt that it was undertaken in accordance with a design to commit the substantive offense.

Two, that Victor Dominquez did such act knowingly;

Three, that at the time of the offense M.D. had not attained the age of 12 years;

Four, that M.D. is an Indian; and

Five, that the offense took place in Indian Country, in the District of South Dakota.

For you to find Mr. Dominquez guilty of the offense charged in Count 1 of the Indictment, the government must prove all five of the essential elements beyond a reasonable doubt. Otherwise, you must find Mr. Dominquez not guilty of the offense charged in the Indictment.

FINAL INSTRUCTION NO. 3 – ABUSIVE SEXUAL CONTACT OF A CHILD

For you to find Victor Dominquez guilty of the offense of abusive sexual contact of a child as charged in Count 2 of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that between on or about March 2006 and March 2012, Victor Dominquez did engage in sexual contact and cause sexual contact, that is, the intentional touching, through the clothing, of the buttocks, with M.D.;

For purposes of this charge, the term “sexual contact” means the intentional touching by Mr. Dominquez, either directly or through the clothing, of M.D.’s buttocks.

Two, that Victor Dominquez did such act knowingly;

Three, that Victor Dominquez did such act with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

Four, that at the time of the offense M.D. had not attained the age of 12 years;

Five, that M.D. is an Indian; and

Six, that the offense took place in Indian Country, in the District of South Dakota.

For you to find Mr. Dominquez guilty of the offense charged in Count 2 of the Indictment, the government must prove all six of the essential elements beyond a reasonable doubt. Otherwise, you must find Mr. Dominquez not guilty of the offense charged in the Indictment.

FINAL INSTRUCTION NO. 4 – ABUSIVE SEXUAL CONTACT OF A CHILD

For you to find Victor Dominquez guilty of the offense of abusive sexual contact of a child as charged in Count 3 of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that between on or about March 2006 and March 2012, Victor Dominquez did engage in sexual contact and cause sexual contact, that is, the intentional touching, through the clothing, of the breasts, with M.D.;

For purposes of this charge, the term “sexual contact” means the intentional touching by Mr. Dominquez, either directly or through the clothing, of M.D.’s breasts.

Two, that Victor Dominquez did such act knowingly;

Three, that Victor Dominquez did such act with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

Four, that at the time of the offense M.D. had not attained the age of 12 years;

Five, that M.D. is an Indian; and

Six, that the offense took place in Indian Country, in the District of South Dakota.

For you to find Mr. Dominquez guilty of the offense charged in Count 3 of the Indictment, the government must prove all six of the essential elements beyond a reasonable doubt. Otherwise, you must find Mr. Dominquez not guilty of the offense charged in the Indictment.

FINAL INSTRUCTION NO. 5 – ABUSIVE SEXUAL CONTACT OF A CHILD

For you to find Victor Dominquez guilty of the offense of abusive sexual contact of a child as charged in Count 4 of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that between on or about March 2006 and March 2012, Victor Dominquez did engage in sexual contact and cause sexual contact, while in a bed, that is, the intentional touching, either directly or through the clothing, of the breasts and buttocks, with M.D.;

For purposes of this charge, the term “sexual contact” means the intentional touching by Mr. Dominquez, either directly or through the clothing, of M.D.’s breasts and buttocks while in a bed.

Two, that Victor Dominquez did such act knowingly;

Three, that Victor Dominquez did such act with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

Four, that at the time of the offense M.D. had not attained the age of 12 years;

Five, that M.D. is an Indian; and

Six, that the offense took place in Indian Country, in the District of South Dakota.

For you to find Mr. Dominquez guilty of the offense charged in Count 4 of the Indictment, the government must prove all six of the essential elements beyond a reasonable doubt. Otherwise, you must find Mr. Dominquez not guilty of the offense charged in the Indictment.

FINAL INSTRUCTION NO. 6 – FELONY CHILD ABUSE

For you to find Victor Dominquez guilty of the offense of felony child abuse as charged in Count 5 of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that between on or about March 2006 and March 2012, Victor Dominquez did intentionally and knowingly expose M.D., through actions and omissions causing M.D. to be subject to sexual exploitation, that is, Mr. Dominquez caused or knowingly permitted M.D. to engage in an activity or the simulation of an activity that is harmful to minors, involves nudity, or is obscene, by showing M.D. pornographic videos;

The term “expose” means to place in a position where the child is open to foreseeable harm.

Two, that Victor Dominquez committed such act without just cause;

Three, that M.D. was under the age of 18 at the time of the offense;

Four, that M.D. is an Indian; and

Five, that the offense took place in Indian Country, in the District of South Dakota.

For you to find Mr. Dominquez guilty of the offense charged in Count 5 of the Indictment, the government must prove all five of the essential elements beyond a reasonable doubt. Otherwise, you must find Mr. Dominquez not guilty of the offense charged in the Indictment.

FINAL INSTRUCTION NO. 7 – FELONY CHILD ABUSE

For you to find Victor Dominquez guilty of the offense of felony child abuse as charged in Count 6 of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that between on or about March 2006 and March 2012, Victor Dominquez did intentionally and knowingly abuse, torment, or cruelly punish T.B.C.;

The term “abuse” means physical maltreatment.

The term “torment” means to cause severe and unusually persistent or recurrent distress of body or mind.

The term “cruelly punish” means to punish in such a way as to intentionally inflict physical suffering with reckless indifference to pain.

Two, that Victor Dominquez committed such act without just cause;

Three, that T.B.C. was under the age of 18 at the time of the offense;

Four, that T.B.C. is an Indian; and

Five, that the offense took place in Indian Country, in the District of South Dakota.

For you to find Mr. Dominquez guilty of the offense charged in Count 6 of the Indictment, the government must prove all five of the essential elements beyond a reasonable doubt. Otherwise, you must find Mr. Dominquez not guilty of the offense charged in the Indictment.

FINAL INSTRUCTION NO. 8 – ABUSIVE SEXUAL CONTACT OF A CHILD

For you to find Victor Dominquez guilty of the offense of abusive sexual contact of a child as charged in Count 7 of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that between on or about March 2006 and July 1, 2009, Victor Dominquez did engage in sexual contact and cause sexual contact, that is, the intentional touching, either directly or through the clothing, of the breasts, with C.B.C.;

For purposes of this charge, the term “sexual contact” means the intentional touching by Mr. Dominquez, either directly or through the clothing, of C.B.C.’s breasts.

Two, that Victor Dominquez did such act knowingly;

Three, that Victor Dominquez did such act with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

Four, that at the time of the offense C.B.C. had attained the age of 12 years but not 16 years and was at least four years younger than Victor Dominquez;

Five, that C.B.C. is an Indian; and

Six, that the offense took place in Indian Country, in the District of South Dakota.

For you to find Mr. Dominquez guilty of the offense charged in Count 7 of the Indictment, the government must prove all six of the essential elements beyond a reasonable doubt. Otherwise, you must find Mr. Dominquez not guilty of the offense charged in the Indictment.

FINAL INSTRUCTION NO. 9 – ABUSIVE SEXUAL CONTACT OF A CHILD

For you to find Victor Dominquez guilty of the offense of abusive sexual contact of a child as charged in Count 8 of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that between on or about March 2006 and July 1, 2009, Victor Dominquez did engage in sexual contact and cause sexual contact, that is, the intentional touching, either directly or through the clothing, of the buttocks, with C.B.C.;

For purposes of this charge, the term “sexual contact” means the intentional touching by Mr. Dominquez, either directly or through the clothing, of C.B.C.’s buttocks.

Two, that Victor Dominquez did such act knowingly;

Three, that Victor Dominquez did such act with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

Four, that at the time of the offense C.B.C. had attained the age of 12 years but not 16 years and was at least four years younger than Victor Dominquez;

Five, that C.B.C. is an Indian; and

Six, that the offense took place in Indian Country, in the District of South Dakota.

For you to find Mr. Dominquez guilty of the offense charged in Count 8 of the Indictment, the government must prove all six of the essential elements beyond a reasonable doubt. Otherwise, you must find Mr. Dominquez not guilty of the offense charged in the Indictment.

FINAL INSTRUCTION NO. 10 – KNOWLEDGE AND INTENT

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 consequence of acts knowingly done or knowingly omitted.

An act is done "knowingly" if the defendant is aware of the act and does not act, or fails to act, through ignorance mistake, or accident. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

FINAL INSTRUCTION NO. 11 – INDIAN PERSON

The Indictment in this case alleges that M.D. is an Indian, that T.B.C. is an Indian, and that C.B.C. is an Indian. The existence of this factor is necessary in order for the Court to have jurisdiction over the crimes charged in the Indictment.

The government must prove beyond a reasonable doubt that each offense was committed against an Indian in order for the defendant to be proven guilty of the offenses charged.

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 or she lives on the reservation and participates in Indian social life.

It is not necessary that all of these factors be present. Rather, you are to consider all the evidence in determining whether the government has proved beyond a reasonable doubt that each alleged victim is an Indian.

FINAL INSTRUCTION NO. 12 – INDIAN COUNTRY

The Indictment in this case alleges that the offenses occurred in Indian Country. The existence of this factor is necessary in order for the Court to have jurisdiction over the crimes charged in the Indictment.

The government must prove beyond a reasonable doubt that the offenses occurred in Indian Country in order for the defendant to be proven guilty of the offenses charged.

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.

FINAL INSTRUCTION NO. 13 - DEFENDANT'S PRIOR SIMILAR ACTS

You have heard testimony that Victor Dominquez may have previously committed other acts of child sex abuse. He is not charged with these other acts. You may consider this evidence only if you unanimously find it is more likely true than not true. You decide that by considering all the evidence and deciding what evidence is more believable. This is a lower standard than proof beyond a reasonable doubt.

If you find that these acts have not been proved, you must disregard them. If you find that these acts have been proved, you may consider them to help you decide any matter to which they are relevant.

You should give them the weight and value you believe they are entitled to receive. You may consider the evidence of such other acts of child sex abuse for its tendency, if any, to show Victor Dominquez's propensity to engage in child sex abuse. You may also consider the evidence for its tendency, if any, to determine whether Victor Dominquez committed the acts charged in the Indictment. Remember, Victor Dominquez is on trial only for the charged offenses. You may not convict him simply because you believe he may have committed similar acts in the past.

FINAL INSTRUCTION NO. 14 – 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 has said or done something, or has 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, the statements were not admitted to prove that the contents of those statements are 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, if any, you think it deserves.

Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. 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.

FINAL INSTRUCTION NO. 15 – EXPERT WITNESS

You have heard testimony from more than one person described as an expert. A person who, by knowledge, skill, training, education, or experience, has become an expert in some field may state her opinion on matters in that field and may also state the reasons for her 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. 16 – PRESUMPTION OF INNOCENCE AND BURDEN
OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the government proves, beyond a reasonable doubt, all of the elements of the offense charged against him.

The burden is always on the government to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the government's witnesses, or testify.
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

This burden means that you must find the defendant not guilty of the offense charged against him, unless the government proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 17 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the government or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the government's lack of evidence.

The government must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The government's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 18 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the government has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the government has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all the evidence bearing on each element before you.
- Take all the time that you feel is necessary.

Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 19 – DUTY DURING DELIBERATIONS

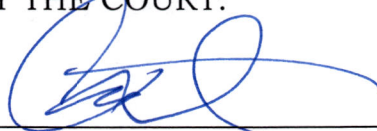
You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is guilty or not guilty. If the defendant is guilty, I will decide what the sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and all Instructions, whether written or not. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated February 5, 2025.

BY THE COURT:



CAMELA C. THEELER
UNITED STATES DISTRICT JUDGE

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

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>VICTOR DOMINQUEZ,</p> <p>Defendant.</p>	<p>5:24-CR-50095-CCT</p> <p>VERDICT FORM</p>
--	---

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

1. We find the defendant, Victor Dominquez, _____ (fill in either “not guilty” or “guilty”) of aggravated sexual abuse of a child involving the penetration of M.D.’s genital opening by a finger as charged in Count 1 of the Indictment.
2. We find the defendant, Victor Dominquez, _____ (fill in either “not guilty” or “guilty”) of abusive sexual contact of a child involving the intentional touching of M.D.’s buttocks as charged in Count 2 of the Indictment.
3. We find the defendant, Victor Dominquez, _____ (fill in either “not guilty” or “guilty”) of abusive sexual contact of a child involving the intentional touching of M.D.’s breasts as charged in Count 3 of the Indictment.
4. We find the defendant, Victor Dominquez, _____ (fill in either “not guilty” or “guilty”) of abusive sexual contact of a child involving the intentional touching, while in a bed, of M.D.’s breasts and buttocks as charged in Count 4 of the Indictment.

5. We find the defendant, Victor Dominquez, _____ (fill in either “not guilty” or “guilty”) of felony child abuse involving the showing of pornographic videos to M.D. as charged in Count 5 of the Indictment.
6. We find the defendant, Victor Dominquez, _____ (fill in either “not guilty” or “guilty”) of felony child abuse involving the abuse, torment, or cruel punishment of T.B.C. as alleged in Count 6 of the Indictment.
7. We find the defendant, Victor Dominquez, _____ (fill in either “not guilty” or “guilty”) of abusive sexual contact of a child involving the intentional touching of C.B.C.’s breasts as charged in Count 7 of the Indictment.
8. We find the defendant, Victor Dominquez, _____ (fill in either “not guilty” or “guilty”) of abusive sexual contact of a child involving the intentional touching of C.B.C.’s buttocks as charged in Count 8 of the Indictment.

Dated February ____, 2025

Foreperson