

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>LLOYD EMERSON ELK,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">5:24-CR-50044-KES</p> <p style="text-align: center;">FINAL INSTRUCTIONS TO THE JURY</p>
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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 – COUNTS 4 AND 6

At the beginning of the trial I told you that the defendant was accused of eight different crimes. Since the trial, started, however, two of these charges have been disposed of, the ones having to do with Counts 4 and 6. Those charges are no longer before you, and the only crimes that the defendant is charged with now are Counts 1, 2, 3, 5, 7, and 8. You should not guess about or concern yourselves with the reason for this disposition. You are not to consider this fact when deciding if the government has proved, beyond a reasonable doubt, the counts which remain, which are Counts 1, 2, 3, 5, 7 and 8.

FINAL INSTRUCTION NO. 3 – AGGRAVATED SEXUAL ABUSE OF A MINOR

For you to find Lloyd Emerson Elk guilty of the offense of Aggravated Sexual Abuse of a Minor, as charged in Count 1 of the Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that between on or about January 2013 and August 2015, the defendant, Lloyd Emerson Elk, did engage or attempt to engage in a sexual act, that is, contact between the mouth and the penis, with B.L.E.,

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 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.

Two, that Lloyd Emerson Elk did such acts knowingly;

An act is done “knowingly” if the defendant is aware of the act and does not act, or fail 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.

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant—except whether or not he testified in court—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.

Three, that at the time of the offense B.L.E. had not attained the age of twelve years;

Four, that Lloyd Emerson Elk is an Indian person; and

A person is considered an "Indian person" if that person has some Indian blood and if that person is recognized as an Indian person. 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.

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

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.

For you to find Lloyd Emerson Elk guilty of the offense charged in Counts 1 of the Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. If you find that the prosecution has not proved each of the elements, then you must find Lloyd Emerson Elk not guilty of Count 1 charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 4 – AGGRAVATED SEXUAL ABUSE OF A MINOR

For you to find Lloyd Emerson Elk guilty of the offense of Aggravated Sexual Abuse of a Minor, as charged in Count 2 of the Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that between on or about January 2013 and August 2015, the defendant, Lloyd Emerson Elk, did engage or attempt to engage in a sexual act, that is, the penetration, however slight, of the genital opening by a hand or finger, with B.L.E., with an intent to arouse and gratify the sexual desire of any person;

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.

The term “substantial step” was defined for you in Final Jury Instruction No. 3.

Two, that Lloyd Emerson Elk did such acts knowingly;

A description of what it means to act “knowingly” was provided for you in Final Jury Instruction No. 3.

Three, that at the time of the offense B.L.E. had not attained the age of twelve years;

Four, that Lloyd Emerson Elk is an Indian person; and

The term “Indian person” was defined for you in Final Jury Instruction No. 3.

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

The term “Indian Country” was defined for you in Final Jury Instruction No. 3.

For you to find Lloyd Emerson Elk guilty of the offense charged in Count 2 of the Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. If you find that the prosecution

has not proved each of the elements, then you must find Lloyd Emerson Elk not guilty of Count 2 charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 5 – AGGRAVATED SEXUAL ABUSE OF A MINOR

For you to find Lloyd Emerson Elk guilty of the offense of Aggravated Sexual Abuse of a Minor, as charged in Count 3 of the Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that between on or about January 2013 and August 2015, the defendant, Lloyd Emerson Elk, did engage or attempt to engage in a sexual act, that is, contact between the mouth and the vulva, with B.L.E.

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.

The term “substantial step” was defined for you in Final Jury Instruction No. 3.

Two, that Lloyd Emerson Elk did such acts knowingly;

A description of what it means to act “knowingly” was provided for you in Final Jury Instruction No. 3.

Three, that at the time of the offense B.L.E. had not attained the age of twelve years;

Four, that Lloyd Emerson Elk is an Indian person; and

The term “Indian person” was defined for you in Final Jury Instruction No. 3.

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

The term “Indian Country” was defined for you in Final Jury Instruction No. 3.

For you to find Lloyd Emerson Elk guilty of the offense charged in Count 3 of the Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. If you find that the prosecution has not proved each of the elements, then you must find Lloyd Emerson Elk not guilty of Count 3 charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 6 – AGGRAVATED SEXUAL ABUSE OF A MINOR

For you to find Lloyd Emerson Elk guilty of the offense of Aggravated Sexual Abuse of a Minor, as charged in Count 5 of the Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that between on or about January 2013 and August 2015, the defendant, Lloyd Emerson Elk, did engage or attempt to engage in a sexual act, that is, contact between the mouth and the penis, with B.L.E.

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.

The term “substantial step” was defined for you in Final Jury Instruction No. 3.

Two, that Lloyd Emerson Elk did such acts knowingly;

A description of what it means to act “knowingly” was provided for you in Final Jury Instruction No. 3.

Three, that at the time of the offense B.L.E. had not attained the age of twelve years;

Four, that Lloyd Emerson Elk is an Indian person; and

The term “Indian person” was defined for you in Final Jury Instruction No. 3.

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

The term “Indian Country” was defined for you in Final Jury Instruction No. 3.

For you to find Lloyd Emerson Elk guilty of the offense charged in Count 5 of the Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. If you find that the prosecution has not proved each of the elements, then you must find Lloyd Emerson Elk not guilty of Count 5 charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 7 – ABUSIVE SEXUAL CONTACT

For you to find Lloyd Emerson Elk guilty of the offense of Abusive Sexual Contact as charged in Count 7 of the Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, between on or about January 2013 and August 2015, Lloyd Emerson Elk, did knowingly engage or attempt to engage in or cause sexual contact with B.L.E., with the intent to abuse, arouse and gratify the sexual desire of any person;

The term “sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, arouse, and gratify the sexual desire of any person.

A person may be found guilty of an attempt if he intended to engage in sexual contact and voluntarily and intentionally carried out some act which was a substantial step toward engaging in sexual contact.

The term “substantial step” was defined for you in Final Jury Instruction No. 3.

Two, that at the time of the offense B.L.E. had not attained the age of twelve years;

Three, that Lloyd Emerson Elk is an Indian person; and

The term “Indian person” was defined for you in Final Jury Instruction No. 3.

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

The term “Indian Country” was defined for you in Final Jury Instruction No. 3.

For you to find Lloyd Emerson Elk guilty of the offense charged in Count 7 of the Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. If you find that the prosecution has not proved each of the elements, then you must find Lloyd Emerson Elk not guilty of Count 7 charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 8 – TAMPERING WITH A WITNESS

For you to find Lloyd Emerson Elk guilty of the offense of tampering with a witness as charged in Count 8 of the Superseding Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, the defendant, Lloyd Emerson Elk, used physical force or the threat of physical force against any person;

Two, Lloyd Emerson Elk did so with the intent to hinder, delay, or prevent the communication by B.L.E. to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a federal offense; and

Three, there exists a reasonable likelihood that, had B.L.E. communicated with a law enforcement officer, at least part of that communication would have been with a federal law enforcement officer.

For you to find Lloyd Emerson Elk guilty of the offense charged in Count 8 of the Superseding Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. If you find that the prosecution has not proved each of the elements, then you must find Lloyd Emerson Elk not guilty of Count 8 charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 9 – DEFENDANT’S PRIOR SIMILAR ACTS

You have heard testimony that Lloyd Emerson Elk may have previously committed other offenses of child sex abuse. He is not charged with these other offenses. You may consider this evidence only if you unanimously find it is more likely true than not true. You decide that by considering all of 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 offenses have not been proved, you must disregard them. If you find that these offenses 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 Lloyd Emerson Elk’s propensity to engage in child sex abuse. You may also consider the evidence for its tendency, if any, to determine whether Lloyd Emerson Elk committed the acts charged in the superseding indictment. Remember, Lloyd Emerson Elk 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. 10 – IMPEACHMENT

In Preliminary Instruction No. 6, 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, 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, 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. 11 – PRESUMPTION OF INNOCENCE AND BURDEN
OF PROOF

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

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

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

- This burden never, ever shifts to a defendant to prove him innocence.
- This burden means that a defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if a 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 Lloyd Emerson Elk not guilty of an offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 12 – REASONABLE DOUBT

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

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

The prosecution must prove a 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 prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 13 – 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 prosecution has not proved beyond a reasonable doubt that a defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that a 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 of 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. 14 – 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 a defendant is guilty or not guilty. If a 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 these Instructions. 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 a defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against a 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 July 2, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Camela C. Theeler', written over a horizontal line.

CAMELA C. THEELER
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> LLOYD EMERSON ELK, <p style="text-align: center;">Defendant.</p>	5:24-CR-50044-KES VERDICT
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We, the Jury, unanimously find the defendant, Lloyd Emerson Elk, as follows:

COUNT 1: AGGRAVATED SEXUAL ABUSE OF A MINOR	VERDICT
On the charge of “aggravated sexual abuse of a minor,” as charged in Count 1 and explained in Final Jury Instruction No. 3, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
COUNT 2: AGGRAVATED SEXUAL ABUSE OF A MINOR	VERDICT
On the charge of “aggravated sexual abuse of a minor,” as charged in Count 2 and explained in Final Jury Instruction No. 4, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
COUNT 3: AGGRAVATED SEXUAL ABUSE OF A MINOR	VERDICT
On the charge of “aggravated sexual abuse of a minor,” as charged in Count 3 and explained in Final Jury Instruction No. 5, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
COUNT 5: AGGRAVATED SEXUAL ABUSE OF A MINOR	VERDICT
On the charge of “aggravated sexual abuse of a minor,” as charged in Count 5 and explained in Final Jury Instruction 6, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

COUNT 7: ABUSIVE SEXUAL CONTACT	VERDICT
On the charge of “abusive sexual contact” as charged in Count 7 and explained in Final Instruction No. 7, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

COUNT 8: TAMPERING WITH A WITNESS	VERDICT
On the charge of “tampering with a witness” as charged in Count 8 and explained in Final Instruction No. 8, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

_____ Date

_____ Foreperson