

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

UNITED STATES OF AMERICA,  
  
Plaintiff,

vs.

EUGENE HOLLOW HORN BEAR,  
  
Defendant.

3:23-CR-30087-ECS

FINAL JURY INSTRUCTIONS

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, the documents and other things received as exhibits, and the facts that have been stipulated—that is, formally agreed to by the parties.

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 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.

When you were instructed that evidence was received for a limited purpose, you must follow that instruction.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

#### 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 of any witness 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.

You should judge the testimony of the defendant in the same manner as you would judge the testimony of any other witness.

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.

INSTRUCTION NO. 5

You have heard evidence that the defendant, Eugene Hollow Horn Bear, was previously convicted of three crimes. You may use that evidence only to help you decide whether to believe his testimony and how much weight to give it. The fact that he was previously convicted of a crime does not mean that he committed the crimes charged here, and you must not use that evidence as any proof of the crimes charged in this case.

INSTRUCTION NO. 6

The Superseding Indictment in this case charges the defendant, Eugene Hollow Horn Bear, with one count of sexual abuse of a person incapable of consent and two counts of abusive sexual contact. The defendant has pleaded not guilty to these charges.

The Superseding Indictment is simply the document that formally charges the defendant with the crimes for which he is on trial. The Superseding Indictment is not evidence of anything. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate, with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty. This presumption can be overcome only if the United States proved during the trial, beyond a reasonable doubt, each element of the crimes charged.

Please remember that only the defendant, not anyone else, is on trial here, and that the defendant is on trial only for the crimes charged, not for anything else. Keep in mind that each count charges a separate crime. You must consider each count separately and return a separate verdict for each count.

There is no burden upon the defendant to prove that he is innocent. Instead, the burden of proof remains on the United States throughout the trial.

INSTRUCTION NO. 7

The crime of sexual abuse of a person incapable of consent, as charged in Count I of the Superseding Indictment, has five elements, which are:

***One*, that on or about July 20, 2023, the defendant, Eugene Hollow Horn Bear, knowingly engaged in a sexual act with Bevelyn Brave Hawk or knowingly attempted to engage in a sexual act with Bevelyn Brave Hawk;**

The term “sexual act” as used in this instruction is defined in Instruction No. 8.

***Two*, that at the time of such act, Bevelyn Brave Hawk 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 the defendant knew that Bevelyn Brave Hawk 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;**

***Four*, that the defendant 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; otherwise, you must find him not guilty of this crime.



INSTRUCTION NO. 8

The term “sexual act” as used in Instruction No. 7 means one or more of the following: (A) contact between the penis and the vulva or the penis and the anus that involves penetration, however slight; or (B) contact between the mouth and the penis or between the mouth and the vulva, or the mouth and the anus; or (C) the penetration, however slight, of the anal or genital opening of another 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.

INSTRUCTION NO. 9

As stated in Instruction No. 7, the United States must prove that the defendant knowingly engaged in a sexual act with Bevelyn Brave Hawk, who was incapable of appraising the nature of the conduct or was physically incapable of declining participation in or communicating an unwillingness to engage in that sexual act.

To find the defendant guilty of sexual abuse of a person incapable of consent, you must find, beyond a reasonable doubt, that Bevelyn Brave Hawk did not consent to the sexual act, otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 10

The crime of abusive sexual contact, as charged in Count II of the Superseding Indictment, has five elements, which are:

***One*, that on or about between July 20, 2023, the defendant, Eugene Hollow Horn Bear, knowingly engaged in or attempted to engage in sexual contact with Bevelyn Brave Hawk;**

The term “sexual contact” as used in this instruction is defined in Instruction No. 11.

***Two*, that at the time of such act, Bevelyn Brave Hawk 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 contact;**

***Three*, that the defendant knew that Bevelyn Brave Hawk 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 contact;**

***Four*, that the defendant 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 him guilty of the crime charged; otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 11

The term “sexual contact” as used in Instruction No. 10 and No. 13 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, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

INSTRUCTION NO. 12

A person may be found guilty of attempting to commit the offenses charged in Counts I and II if he intended to engage in the charged offenses and voluntarily and intentionally carried out some act which was a substantial step towards engaging in those offenses. 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.

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, but the conduct must be necessary to the consummation of the offense and be of such a nature that a reasonable observer viewing the conduct in context could conclude beyond a reasonable doubt that it was undertaken with a design to commit the offense charged.

INSTRUCTION NO. 13

The crime of abusive sexual contact, as charged in Count III of the Superseding Indictment, has four elements, which are:

***One, that on or about between July 20, 2023, the defendant, Eugene Hollow Horn Bear, knowingly engaged in sexual contact with Bevelyn Brave Hawk;***

“Sexual contact” as used in this instruction is defined in Instruction No. 11.

***Two, that the sexual contact occurred without Bevelyn Brave Hawk’s permission;***

***Three, that the defendant is an Indian; and***

***Four, that the offense took place in Indian Country.***

If all these elements have been proved beyond a reasonable doubt as to the defendant, then you must find him guilty of the crime charged; otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 14

In the crime of abusive sexual contact, as charged in Counts II and III of the Superseding Indictment, there must exist in the mind of the defendant the specific intent to abuse, humiliate, harass, or degrade the alleged victim, or to arouse or gratify the sexual desire of any person.

If the defendant acted without such specific intent, the crime of abusive sexual contact has not been committed.

INSTRUCTION NO. 15

The Superseding Indictment in this case alleges that the defendant is an Indian and that the alleged offenses occurred in Indian country. The existence of those two factors is necessary for this Court to have jurisdiction over the crimes charged in the Superseding Indictment.

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that the place where the alleged incidents are claimed to have occurred is in Indian country.

The defendant has not, by entering this agreement or stipulation, admitted his guilt of the offenses charged, and you may not draw any inference of guilt from the stipulation. The only effect of this stipulation is to establish the facts that the defendant is an Indian and that the place where the alleged offenses are claimed to have occurred is in Indian country.



INSTRUCTION NO. 16

The Superseding Indictment charges that the offenses were committed between “on or about” certain dates. Although it is necessary for the United States to prove beyond a reasonable doubt that the offenses were committed on a date reasonably near the dates alleged in the Superseding Indictment, it is not necessary for the United States to prove that the offenses were committed precisely on the dates charged.

INSTRUCTION NO. 17

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 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.

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The United States is not required to prove that the defendant knew that his actions were unlawful. 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.

INSTRUCTION NO. 18

You have heard testimony that the defendant, Eugene Hollow Horn Bear, made a statement to law enforcement. 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 the evidence, including the circumstances under which the statement may have been made.

INSTRUCTION NO. 19

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 his 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 you must find the defendant, Eugene Hollow Horn Bear, 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.

INSTRUCTION NO. 20

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

## INSTRUCTION NO. 21

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, and on each count of the superseding indictment—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 United States 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 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.

*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 smart phone 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, Snapchat, LinkedIn, Instagram, YouTube, X (formerly known as Twitter), or Truth Social, 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. 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 court security officer that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,  Plaintiff,  vs.  EUGENE HOLLOW HORN BEAR,  Defendant.	3:23-CR-30087-ECS  VERDICT FORM
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find the defendant, Eugene Hollow Horn Bear, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of sexual abuse of a person incapable of consent as charged in Count I of the Superseding Indictment.
2. We find the defendant, Eugene Hollow Horn Bear, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of abusive sexual contact as charged in Count II of the Superseding Indictment.
3. We find the defendant, Eugene Hollow Horn Bear, \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of abusive sexual contact as charged in Count III of the Superseding Indictment.

Dated August \_\_\_\_, 2024.

\_\_\_\_\_  
Foreperson