

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 – AGGRAVATED SEXUAL ABUSE OF A CHILD

For you to find Oscar Hudspeth, Sr., guilty of the offenses of aggravated sexual abuse of a child as charged in Count 1 of the Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that between on or about May 1, 2016 and September 30, 2019, Oscar Hudspeth, Sr., did engage or attempt to engage in a sexual act, that is the intentional touching, not through the clothing, of the genitalia of D.J. who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

For purposes of this charge, the term “sexual act” means the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Two, that Oscar Hudspeth, Sr., did such acts knowingly;

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.

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.

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

Four, that Oscar Hudspeth, Sr., is an Indian;

You are instructed that the prosecution and defendant have agreed that defendant is an Indian person.

The defendant, has not, by entering into this agreement, 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 present to the jury that defendant is an Indian.

And five, the offense took place in Indian Country, in the District of South Dakota.

You are instructed that the prosecution and defendant have agreed that the place where the alleged incidents occurred is in Indian Country.

The defendant, has not, by entering into this agreement, 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 present to the jury that the place where the alleged incidents occurred is in Indian Country.

For you to find Oscar Hudspeth, Sr., guilty of the offense charged in Count 1 of the Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. Otherwise, you must find Oscar Hudspeth, Sr., not guilty of the offense charged in the Indictment.

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

For you to find Oscar Hudspeth, Sr., guilty of the offense of abusive sexual contact of a child as charged in Count 2 of the Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that between on or about May 1, 2016, and September 30, 2019, Oscar Hudspeth, Sr., did engage or attempt to engage in or cause sexual contact with D.J., that is the intentional touching, either directly or through the clothing, of the genitalia and buttocks of D.J. with an intent to abuse, humiliate, harass, degrade, or arouse or 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, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Two, that Oscar Hudspeth, Sr., did such acts knowingly;

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.

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.

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

Four, that Oscar Hudspeth, Sr., is an Indian;

You are instructed that the prosecution and defendant have agreed that defendant is an Indian person.

The defendant, has not, by entering into this agreement, 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 present to the jury that defendant is an Indian.

And five, the offense took place in Indian Country, in the District of South Dakota.

You are instructed that the prosecution and defendant have agreed that the place where the alleged incidents occurred is in Indian Country.

The defendant, has not, by entering into this agreement, 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 present to the jury that the place where the alleged incidents occurred is in Indian Country.

For you to find Oscar Hudspeth, Sr., guilty of the offense charged in Count 2 of the Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. Otherwise, you must find Oscar Hudspeth, Sr., not guilty of the offense charged in Count 2 of the Indictment

FINAL INSTRUCTION NO. 4 – 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, they 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. 5 – EXPERT WITNESS

You have heard testimony from a person described as an expert. Persons who, by knowledge, skill, training, education or experience, have become an expert in some field may state their opinions on matters in that field and may also state the reasons for their 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. 6 – 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 prosecution proves, beyond a reasonable doubt, all of the elements of the offense charged against him.

The burden is always on the prosecution 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 prosecution'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 prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 7 – 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 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 prosecution's lack of evidence.

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

FINAL INSTRUCTION NO. 8 – 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 the defendant is guilty, say so.
- If you are convinced that the prosecution 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. 9 – 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 October 10th, 2024.

BY THE COURT:



CAMELA C. THEELER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. OSCAR HUDSPETH, SR., Defendant.	5:23-CR-50192-CCT VERDICT
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On the charges against the defendant Oscar Hudspeth, Sr., we, the Jury, unanimously find as follows:

AGGRAVATED SEXUAL ABUSE OF A CHILD	VERDICT
On the charge of “aggravated sexual abuse of a child” as explained in Final Instruction No. 2, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

ABUSIVE SEXUAL CONTACT OF A CHILD	VERDICT
On the charge of “abusive sexual contact of a child” as explained in Final Instruction No. 3, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

Please sign and date this Verdict Form.

Date

Foreperson