

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHANE MOUSSEAUX,

Defendant.

4:22-CR-40122-RAL

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 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 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.

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.

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 testimony from a person described as an expert. A person who, by knowledge, skill, training, education, or experience, has become expert in some field may state his or her opinion on matters in that field and may also state the reasons for his or 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' 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.

INSTRUCTION NO. 6

The superseding indictment contains three counts of Sexual Abuse of a Minor 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.

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 a defendant to prove that he is innocent. Instead, the burden of proof remains on the United States throughout the trial. Thus, the fact that the defendant did not testify cannot be used by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 7

The crime of Sexual Abuse of a Minor, as charged in Count 1 of the superseding indictment, has five elements, which are as follows:

***One*, that between on or about August 6, 2020, and June 21, 2022, the defendant, Shane Mousseaux, knowingly engaged in a sexual act with J.T.B.;**

As used in this instruction, the term “sexual act” means contact between the defendant’s penis and J.T.B.’s vulva. Contact involving the penis occurs upon penetration, however slight.

***Two*, that between on or about August 6, 2020, and June 21, 2022, J.T.B. had attained the age of 12 years but had not attained the age of 16 years;**

***Three*, that between on or about August 6, 2020, and June 21, 2022, the defendant was at least four years older than J.T.B.;**

***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. 8

The crime of Sexual Abuse of a Minor, as charged in Count 2 of the superseding indictment, has five elements, which are as follows:

***One*, that between on or about August 6, 2020, and June 21, 2022, the defendant, Shane Mousseaux, knowingly engaged in a sexual act with J.T.B.;**

As used in this instruction, the term “sexual act” means contact between the defendant’s mouth and J.T.B.’s vulva.

***Two*, that between on or about August 6, 2020, and June 21, 2022, J.T.B. had attained the age of 12 years but had not attained the age of 16 years;**

***Three*, that between on or about August 6, 2020, and June 21, 2022, the defendant was at least four years older than J.T.B.;**

***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. 9

The crime of Sexual Abuse of a Minor, as charged in Count 3 of the superseding indictment, has five elements, which are as follows:

***One*, that between on or about August 6, 2020, and June 21, 2022, the defendant, Shane Mousseaux, knowingly engaged in a sexual act with J.T.B.;**

As used in this instruction, the term “sexual act” means the penetration, however slight, of J.T.B.’s genital opening by the defendant’s hand or finger.

***Two*, that the sexual act was done with an intent to abuse, humiliate, harass, or degrade J.T.B., or to arouse or gratify the sexual desire of the defendant;**

***Three*, that between on or about August 6, 2020, and June 21, 2022, J.T.B. had attained the age of 12 years but had not attained the age of 16 years;**

***Four*, that between on or about August 6, 2020, and June 21, 2022, the defendant was at least four years older than J.T.B.;**

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

***Six*, 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. 10

The crime of Abusive Sexual Contact, as charged in Count 4 of the superseding indictment, has six elements, which are as follows:

One, that between on or about August 6, 2020, and June 21, 2022, the defendant, Shane Mousseaux, knowingly engaged in sexual contact with J.T.B.;

As used in this instruction, the term “sexual contact” means intentional touching by the defendant, either directly or through the clothing, of J.T.B.’s genitalia or breasts. You must unanimously agree as to the specific “sexual contact” that the defendant committed.

Two, that the sexual contact was done with an intent to abuse, humiliate, harass, or degrade J.T.B., or to arouse or gratify the sexual desire of the defendant;

Three, that between on or about August 6, 2020, and June 21, 2022, J.T.B. had attained the age of 12 years but had not attained the age of 16 years;

Four, that between on or about August 6, 2020, and June 21, 2022, the defendant was at least four years older than J.T.B.;

Five, that the defendant is an Indian; and

Six, 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 crime of Abusive Sexual Contact, as charged in Count 5 of the superseding indictment, has six elements, which are as follows:

***One*, that between on or about May 1, 2022, and June 21, 2022, the defendant, Shane Mousseaux, knowingly engaged in sexual contact with J.B.;**

As used in this instruction, the term “sexual contact” means intentional touching by the defendant, either directly or through the clothing, of J.B.’s inner thigh.

***Two*, that the sexual contact was done with an intent to abuse, humiliate, harass, or degrade J.B., or to arouse or gratify the sexual desire of the defendant;**

***Three*, that between on or about May 1, 2022, and June 21, 2022, J.B. had attained the age of 12 years but had not attained the age of 16 years;**

***Four*, that between on or about May 1, 2022, and June 21, 2022, the defendant was at least four years older than J.B.;**

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

***Six*, 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. 12

In the crime of Sexual Abuse of a Minor as charged in Count 3 of the superseding indictment and the crime of Abusive Sexual Contact as charged in Counts 4 and 5 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 defendant's sexual desire.

If the defendant acted without such specific intent, the crimes of Sexual Abuse of a Minor as charged in Count 3 of the superseding indictment and Abusive Sexual Contact as charged in Counts 4 and 5 of the superseding indictment have not been committed.

INSTRUCTION NO. 13

The superseding indictment in this case alleges that the defendant is an Indian. The existence of that factor is necessary in order 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.

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 fact that the Defendant is an Indian.

INSTRUCTION NO. 14

The superseding indictment in this case contends that the alleged offenses occurred in Indian country. The existence of that factor is necessary in order for this Court to have jurisdiction over the crimes charged in the superseding indictment.

The United States 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.

INSTRUCTION NO. 15

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. 16

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. 17

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. 18

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
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. SHANE MOUSSEAUX, Defendant.	4:22-CR-40122-RAL 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, Shane Mousseaux, _____ (fill in either “not guilty” or “guilty”) of sexual abuse of a minor involving a sexual act of penis-to-vulva contact as charged in Count 1 of the superseding indictment.
2. We find the defendant, Shane Mousseaux, _____ (fill in either “not guilty” or “guilty”) of sexual abuse of a minor involving a sexual act of mouth-to-vulva contact as charged in Count 2 of the superseding indictment.
3. We find the defendant, Shane Mousseaux, _____ (fill in either “not guilty” or “guilty”) of sexual abuse of a minor involving digital penetration of the genital opening as charged in Count 3 of the superseding indictment.
4. We find the defendant, Shane Mousseaux, _____ (fill in either “not guilty” or “guilty”) of abusive sexual contact of J.T.B. as charged in Count 4 of the superseding indictment.
5. We find the defendant, Shane Mousseaux, _____ (fill in either “not guilty” or “guilty”) of abusive sexual contact of J.B. as charged in Count 5 of the superseding indictment.

Dated April ____, 2024

Foreperson