

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JOSEPH DARRELL PETERSON, JR., Defendant.	CR 24-10031-CBK JURY INSTRUCTIONS
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INSTRUCTION NO. 1

Ladies and gentlemen of the jury, it is my duty now to explain the rules of law you must apply to this case.

You as jurors are the sole judges of the facts. But it is your duty to follow the law stated in these instructions, and to apply that law to the facts as you find them from the evidence before you. I also gave you instructions during the trial and you must follow those instructions. It would be a violation of your sworn duty to base your verdicts upon any rules of law other than the ones given you in these instructions, regardless of your personal feelings as to what the law ought to be.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

INSTRUCTION NO. 2

You have been chosen and sworn as jurors to try the issues of fact presented by the allegations of the superseding indictment and the denials made by the defendant in his pleas of “not guilty.” You are to perform this duty without bias or prejudice, because the law does not permit jurors to be governed by sympathy or public opinion. The accused and the public expect that you will carefully and impartially consider all of the evidence and will follow the law as stated by the Court, in order to reach just verdicts, regardless of the consequences to any party.

INSTRUCTION NO. 3

The superseding indictment in this case charges the defendant with the crimes of aggravated sexual abuse of a child, abusive sexual contact of a child, and tampering with witnesses. The defendant has pleaded not guilty to these charges.

As I told you at the beginning of the trial, the superseding indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Therefore, the defendant, even though charged, begins the trial with no evidence against him. This presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential 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.

INSTRUCTION NO. 24

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 5

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 and questions that I struck from the record, or told you to disregard, are not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

INSTRUCTION NO. 6

There are two types of evidence from which you may find the truth as to the facts of a case -- direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

INSTRUCTION NO. 7

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 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.

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

INSTRUCTION NO. 8

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of a greater credence. 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.

INSTRUCTION NO. 9

You have heard evidence that the defendant allegedly engaged in sexual conduct with Selena White at times and places not alleged in the superseding indictment. The defendant 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 sexual assault or child molestation for its tendency, if any, to show the defendant's propensity to engage in sexual assault as well as its tendency, if any, to determine whether the defendant committed the acts charged in the superseding indictment, and for its tendency, if any, to determine the defendant's intent, motive, plan, design, or opportunity to commit the acts charged in the superseding indictment.

Remember, the defendant is on trial only for the crimes charged. You may not convict a person simply because you believe he may have committed similar acts in the past.

INSTRUCTION NO. 10

You have heard testimony from a person described as an expert. A person who, by knowledge, skill, training, education, or experience, has become an expert in some field may state opinions on matters in that field and may also state the reasons for those opinions.

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.

INSTRUCTION NO. 11

The crime of aggravated sexual abuse of a child, as charged in Count I of the superseding indictment, has four essential elements, which are:

1. Between on or about February 27, 2006, and February 26, 2008, the defendant voluntarily and intentionally engaged in, or attempted to engage in, a sexual act with Selena White, that is penetration, however slight, of Selena White's genital opening by defendant's finger or fingers with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
2. At the time of the offense, Selena White had not attained the age of 12 years.
3. The defendant is an Indian; and
4. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime charged in Count I of the superseding indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

The crime of abusive sexual contact of a child, as charged in Count II of the superseding indictment, has four essential elements, which are:

1. Between on or about February 27, 2006, and February 26, 2008, defendant voluntarily and intentionally engaged in or caused sexual contact with Selena White, that is, the intentional touching, either directly or through the clothing, of Selena White's genitalia by the defendant's hand with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
2. At the time of the offense, Selena White had not attained the age of 12 years.
3. The defendant is an Indian; and
4. The alleged offense took place in Indian Country.

For you to find the defendant guilty of this crime charged in Count II of the superseding indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 13

The crime of abusive sexual contact of a child, as charged in Count III of the superseding indictment, has four essential elements, which are:

1. Between on or about February 27, 2008, and February 26, 2009, defendant voluntarily and intentionally engaged in or caused sexual contact with Selena White, that is, the intentional touching, either directly or through the clothing, of the defendant's genitalia by Selena White's hand with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
2. At the time of the offense, Selena White had not attained the age of 12 years.
3. The defendant is an Indian; and
4. The alleged offense took place in Indian Country.

For you to find the defendant guilty of this crime charged in Count III of the superseding indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 14

The crime of aggravated sexual abuse of a child, as charged in Count IV of the superseding indictment, has four essential elements, which are:

1. Between on or about February 27, 2009, and February 26, 2012, the defendant voluntarily and intentionally engaged in, or attempted to engage in, a sexual act with Selena White, that is penetration, however slight, of Selena White's vulva by defendant's penis.
2. At the time of the offense, Selena White had not attained the age of 12 years.
3. The defendant is an Indian; and
4. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime charged in Count IV of the superseding indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 15

The crime of aggravated sexual abuse of a child, as charged in Count V of the superseding indictment, has four essential elements, which are:

1. Between on or about February 27, 2010, and February 26, 2012, the defendant voluntarily and intentionally engaged in, or attempted to engage in, a sexual act with Selena White, that is penetration, however slight, of Selena White's genital opening by defendant's toes with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
2. At the time of the offense, Selena White had not attained the age of 12 years.
3. The defendant is an Indian; and
4. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime charged in Count V of the superseding indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 16

At the beginning of the trial I told you that the defendant was accused of seven different crimes: three counts of aggravated sexual abuse of a child, two counts of abusive sexual contact of a child, and two counts of tampering with a witness. Since the trial started, however, one of the charges of tampering with a witness has been dismissed. That charge is no longer before you and the only crimes that the defendant is charged with now are three counts of aggravated sexual abuse of a child, two counts of abusive sexual contact of a child, and one count of tampering with a witness. You should not guess or concern yourselves with the reasons 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.

INSTRUCTION NO. 17

The crime of witness tampering, as charged in Count VII of the superseding indictment, has two elements, which are:

1. On or about between May 6, 2025, and May 13, 2025, the defendant knowingly attempted to intimidate, threaten, or corruptly persuade Cheryl Ragsdale or Selena White by sending a letter.
2. The defendant did so with the intent to influence, delay, or prevent the testimony of Cheryl Ragsdale or Selena White in an official proceeding, namely a criminal jury trial.

For you to find the defendant guilty of the crime charged in Count VII of the superseding indictment, the government must prove all of these elements beyond a reasonable doubt. Otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 18

To “intimidate” someone means intentionally to say or do something that would cause a person of ordinary sensibilities to be fearful of harm to herself or another. It is not necessary for the government to prove that Selena White or Cheryl Ragsdale were actually frightened.

To corruptly persuade someone means to persuade or attempt to persuade with consciousness of wrongdoing.

To act with “intent to influence” the testimony of a person means to act for the purpose of getting the person to change or color or shade her testimony in some way. It is not necessary for the government to prove that the person’s testimony was, in fact, changed in any way.

INSTRUCTION NO. 19

If you find that the defendant attempted to influence a witness in connection with a crime charged in this case, this evidence may be considered by you in light of all the other evidence in the case. You may consider whether this evidence shows a consciousness of guilt and determine the significance to be attached to any such conduct.

INSTRUCTION NO. 20

Intent may be proved like anything else. You may consider any statements and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a 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.

INSTRUCTION NO. 21

The superseding indictment charges that the offenses were committed “between on or about” or “on or about” certain dates. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offenses were committed on a date reasonably near the date or dates alleged.

INSTRUCTION NO. 22

The government must prove beyond a reasonable doubt that the defendant is an Indian in order for the defendant to be proven guilty of the offense charged in Counts I – V of the superseding indictment. The term “Indian,” as used in these instructions means:

1. That the defendant has some degree of Indian blood; and
2. That the defendant is recognized as an Indian person by a tribe or the federal government, or both.

In determining whether the defendant is recognized as an Indian person by a tribe or the federal government, you may consider the following factors among others. No one factor is dispositive.

1. Whether the defendant is an enrolled member of a tribe or band.
2. Whether a government recognizes the defendant as an Indian by providing assistance reserved only to Indians.
3. Whether the defendant enjoys benefits of tribal affiliation.
4. Whether the defendant lives on a reservation or participates in Indian social life.

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

INSTRUCTION NO. 23

The government must prove beyond a reasonable doubt that the offenses in Counts I - V of the superseding indictment occurred in Indian country, in order for the defendant to be proven guilty of the offense charged.

The term “Indian country,” as used in these instructions, means:

1. 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.
2. 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
3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

INSTRUCTION NO. 24

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

A verdict form has been prepared for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdicts, you will have your foreperson fill in, date, and sign the form to state the verdicts upon which you unanimously agree, and then notify the marshal that you have a verdict.

INSTRUCTION NO. 25

The verdicts must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdicts must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 26

If you have questions, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury.

You will note from the oath about to be taken by the marshal that he, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached unanimous verdicts.

INSTRUCTION NO. 27

It is proper to add a final caution.

Nothing that I have said in these instructions, and nothing that I have said or done during the trial, has been said or done to suggest to you what I think your verdicts should be.

What the verdicts shall be is your exclusive duty and responsibility.