

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of 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 – ABUSIVE SEXUAL CONTACT

For you to find Gary Pourier guilty of “abusive sexual contact” as charged in Count 1 of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that on or about between June 1, 2023, and June 30, 2023, Gary Pourier did engage in sexual contact and cause sexual contact, that is, the intentional touching, either directly or through the clothing, of the genitalia, with M.Y.H., with his hand/fingers while inside a vehicle;

Two, that Gary Pourier did so by using force against M.Y.H.;

The term “force” means the use of physical force sufficient to overcome, restrain, or injure the alleged victim; or the use of force sufficient to prevent the alleged victim from escaping the sexual act. A discrepancy in the size of the individuals is not, by itself, sufficient to conclude that the defendant used force.

Three, that Gary Pourier did such acts knowingly;

Four, that Gary Pourier did such acts with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

Five, that at the time of the offense, M.Y.H. had attained the age of 12 years, but not the age of 16 years, and was at least four years younger than Gary Pourier;

Six, that Gary Pourier is an Indian; and

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

For you to find Gary Pourier guilty of the offense charged in Count 1 of the Indictment, the government must prove all seven of the essential elements beyond a reasonable doubt. Otherwise, you must find Gary Pourier not guilty of the offense charged in Count 1 of the Indictment.

FINAL INSTRUCTION NO. 3 – ABUSIVE SEXUAL CONTACT

For you to find Gary Pourier guilty of “abusive sexual contact” as charged in Count 2 of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that on or about July 14, 2024, Gary Pourier did engage in sexual contact and cause sexual contact, that is, the intentional touching, either directly or through the clothing, of the breasts of A.H.N.H. with his hand(s) at the Common Cents Convenience Store;

Two, that Gary Pourier did such acts knowingly;

Three, that Gary Pourier did such acts with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

Four, that at the time of the offense, A.H.N.H. had not attained the age of 12 years;

Five, that Gary Pourier is an Indian; and

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

For you to find Gary Pourier guilty of the offense charged in Count 2 of the Indictment, the government must prove all six of the essential elements beyond a reasonable doubt. Otherwise, you must find Gary Pourier not guilty of the offense charged in Count 2 of the Indictment.

FINAL INSTRUCTION NO. 4 – ABUSIVE SEXUAL CONTACT

For you to find Gary Pourier guilty of the offense of “abusive sexual contact” as charged in Count 3 of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that on or about July 14, 2024, Gary Pourier did engage in sexual contact and cause sexual contact, that is, the intentional touching, either directly or through the clothing, of the buttocks of A.H.N.H. with his penis at the Common Cents Convenience Store;

Two, that Gary Pourier did such acts knowingly;

Three, that Gary Pourier did such acts with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

Four, that at the time of the offense, A.H.N.H. had not attained the age of 12 years;

Five, that Gary Pourier is an Indian; and

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

For you to find Gary Pourier guilty of the offense charged in Count 3 of the Indictment, the government must prove all six of the essential elements beyond a reasonable doubt. Otherwise, you must find Gary Pourier not guilty of the offense charged in Count 3 of the Indictment.

FINAL INSTRUCTION NO. 5 – ABUSIVE SEXUAL CONTACT

For you to find Gary Pourier guilty of the offense of “abusive sexual contact” as charged in Count 4 of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that on or about between November 10, 2005, and November 24, 2005, Gary Pourier did engage in sexual contact and cause sexual contact, that is, the intentional touching, either directly or through the clothing, of the vagina of J.J.E. with his penis inside his bedroom at his residence;

Two, that Gary Pourier did such acts knowingly;

Three, that Gary Pourier did such acts with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

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

Five, that Gary Pourier is an Indian; and

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

For you to find Gary Pourier guilty of the offense charged in Count 4 of the Indictment, the government must prove all six of the essential elements beyond a reasonable doubt. Otherwise, you must find Gary Pourier not guilty of the offense charged in Count 4 of the Indictment.

FINAL INSTRUCTION NO. 6 – ABUSIVE SEXUAL CONTACT

For you to find Gary Pourier guilty of the offense of “abusive sexual contact” as charged in Count 5 of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, that on or about between November 10, 2005, and November 24, 2005, Gary Pourier did engage in sexual contact and cause sexual contact, that is, the intentional touching, either directly or through the clothing, of the breasts of J.L. with his hand inside his bedroom at his residence;

Two, that Gary Pourier did such acts knowingly;

Three, that Gary Pourier did such acts with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

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

Five, that Gary Pourier is an Indian; and

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

For you to find Gary Pourier guilty of the offense charged in Count 5 of the Indictment, the government must prove all six of the essential elements beyond a reasonable doubt. Otherwise, you must find Gary Pourier not guilty of the offense charged in Count 5 of the Indictment.

FINAL INSTRUCTION NO. 7 – SEXUAL CONTACT

The term “sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, breast, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

FINAL INSTRUCTION NO. 8 – STIPULATION AS TO INDIAN PERSON AND
INDIAN COUNTRY

The parties stipulated—that is, they have agreed—that Gary Pourier is an Indian person, and the places—Common Cents near Porcupine, and Gary Pourier’s residence, including the Sundance grounds to Mary Jo Lebeaux’s residence near Porcupine, South Dakota—where the offenses are alleged to have occurred, are in Indian Country. You must therefore treat those facts as having been proved.

By entering into this stipulation, Gary Pourier has not admitted his guilt of the offense charged, and you may not draw any inference of guilt from this stipulation. The only effect of this stipulation is to establish the fact that Gary Pourier is an Indian person, and the places—Common Cents near Porcupine, and Gary Pourier’s residence, including the Sundance grounds to Mary Jo Lebeaux’s residence near Porcupine, South Dakota—where the offenses are alleged to have occurred, are in Indian Country.

FINAL INSTRUCTION NO. 9 – KNOWLEDGE AND INTENT

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done “knowingly” if the defendant is aware of the act and does not 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 proven like anything else. You may consider any statements made or acts done by the defendant and all the facts and circumstances in evidence that 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.

FINAL INSTRUCTION NO. 10 – TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's:
 - intelligence
 - memory
 - opportunity to have seen and heard what happened
 - motives for testifying
 - interest in the outcome of the case
 - manner while testifying
 - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or whether they are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility.

You should not give any more or less weight to a witness's testimony just because the witness is one of the following:

- a public official or law enforcement officer
- an expert.

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.

You may give any witness's opinion whatever weight you think it deserves, but you should consider the following:

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all the other evidence in the case.

The defendant testified. You should judge his testimony in the same way that you judge the testimony of any other witness.

It is your exclusive right to give any witness's testimony whatever weight you think it deserves.

FINAL INSTRUCTION NO. 11 – 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, the statements 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. 12 – 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. 13 – 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 government proves, beyond a reasonable doubt, all the elements of an offense charged against him.

The burden is always on the government 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 government'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 an offense charged against him, unless the government proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 14 – REASONABLE DOUBT

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

- A reasonable doubt may arise from evidence produced by the government 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 government’s lack of evidence.

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

FINAL INSTRUCTION NO. 15 – 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 government has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the government 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. 16 – 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 April 16, 2026.

BY THE COURT:



CAMELA C. THEELER
UNITED STATES DISTRICT JUDGE