

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

IRA ALAN ARIAS,

Defendant.

1:17-CR-10025-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, 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.

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 persons described as experts. 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'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. 6

The indictment in this case charges the defendant with three counts of aggravated sexual abuse of a child. The defendant has pleaded not guilty to these charges.

The indictment is simply the document that formally charges the defendant with the crimes for which he is on trial. The 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 government proved during the trial, beyond a reasonable doubt, each element of a crime 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.

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial. Accordingly, the fact that a defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 7

The crime of aggravated sexual abuse of a child involving a sexual act of penis to vulva contact, as charged in Count I of the indictment, has six elements, which are:

**One**, that on or about the 3rd day of May, 2015, the defendant, Ira Alan Arias, knowingly engaged in a sexual act with [REDACTED] or knowingly attempted to engage in a sexual act with [REDACTED]

As used in this instruction, the term "sexual act" means contact between the defendant's penis and [REDACTED]'s vulva. Contact involving the penis occurs upon penetration, however slight.

**Two**, that the defendant used force against [REDACTED],

The term "force" means the use of physical force sufficient to overcome, restrain, or injure the alleged victim; or the use of a threat of harm sufficient to coerce or compel submission by the alleged victim; or the use of force sufficient to prevent the alleged victim from escaping the sexual act.

**Three**, that on May 3, 2015, [REDACTED] was over the age of 12 and under the age of 16;

**Four**, that at the time the defendant was at least four years older than [REDACTED];

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



INSTRUCTION NO. 8

The crime of aggravated sexual abuse of a child involving a sexual act of mouth to vulva contact, as charged in Count II of the indictment, has six elements, which are:

**One**, that on or about the 3rd day of May, 2015, the defendant, Ira Alan Arias, knowingly engaged in a sexual act with [REDACTED] or knowingly attempted to engage in a sexual act with [REDACTED];

As used in this instruction, the term "sexual act" means contact between the defendant's mouth and [REDACTED] vulva.

**Two**, that the defendant used force against [REDACTED];

The term "force" means the use of physical force sufficient to overcome, restrain, or injure the alleged victim; the use of a threat of harm sufficient to coerce or compel submission by the alleged victim; or the use of force sufficient to prevent the alleged victim from escaping the sexual act.

**Three**, that on May 3, 2015, [REDACTED] was over the age of 12 and under the age of 16;

**Four**, that at the time the defendant was at least four years older than [REDACTED];

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

INSTRUCTION NO. 9

The crime of aggravated sexual abuse of a child involving digital penetration of the vulva, as charged in Count III of the indictment, has seven elements, which are:

**One**, that on or about the 3rd day of May, 2015, the defendant, Ira Alan Arias, knowingly engaged in a sexual act with [REDACTED] or knowingly attempted to engage in a sexual act with [REDACTED];

As used in this instruction, the term "sexual act" means the penetration, however slight, of the genital opening of [REDACTED] by the defendant's hand or finger.

**Two**, that the defendant used force against [REDACTED];

The term "force" means the use of physical force sufficient to overcome, restrain, or injure the alleged victim; the use of a threat of harm sufficient to coerce or compel submission by the alleged victim; or the use of force sufficient to prevent the alleged victim from escaping the sexual act.

**Three**, that on May 3, 2015, [REDACTED] was over the age of 12 and under the age of 16;

**Four**, that at the time the defendant was at least four years older than [REDACTED];

**Five**, that the sexual act was done with an intent to abuse, humiliate, harass, or degrade [REDACTED], or to arouse or gratify the sexual desire of the defendant;

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

**Seven**, 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. 10

If you should unanimously find the defendant "Not Guilty," of the crime of aggravated sexual abuse of a child as charged in Counts I, II, and III of the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to crimes charged in the indictment, then you must proceed to determine whether the defendant is guilty or not guilty of the crime of sexual abuse of a minor under this instruction.

The crime of sexual abuse of a minor, a lesser included offense of the crime of aggravated sexual abuse of a child as charged in Counts I, II, and III of the indictment, has five elements, which are:

**One, that on or about the 3rd day of May, 2015, the defendant, Ira Alan Arias, did knowingly engage in a sexual act with [REDACTED] or knowingly attempt to engage in sexual act with [REDACTED],**

As used in this instruction, the term "sexual act" means: a) contact between the defendant's penis and [REDACTED] vulva involving penetration, however slight; or b) contact between defendant's mouth and [REDACTED] vulva; or c) penetration however slight of the genital opening of [REDACTED] by defendant's hand or finger, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

**Two, that on May 3, 2015, [REDACTED] was over the age of 12 and under the age of 16;**

**Three, that at the time the defendant was at least four years older than [REDACTED]**

**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. 11

If you should unanimously find the defendant "Not Guilty," of the crime of aggravated sexual abuse of a child as charged in Counts I, II, and III of the indictment and of the first lesser included offense of sexual abuse of a minor, or if, after all reasonable efforts, you are unable to reach a verdict as to crimes charged in the indictment and the first lesser included offense of sexual abuse of a minor, then you must proceed to determine whether the defendant is guilty or not guilty of the crime of abusive sexual contact under this instruction.

The crime of abusive sexual contact, a second lesser included offense of the crime of aggravated sexual abuse of a child as charged in Counts I, II, and III of the indictment, has six elements, which are:

**One**, that on or about the 3rd day of May, 2015, the defendant, Ira Alan Arias, did knowingly engage in sexual contact with [REDACTED] or knowingly attempt to engage in sexual contact with [REDACTED];

As used in this instruction, 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.

**Two**, that on May 3, 2015, [REDACTED] was over the age of 12 and under the age of 16;

**Three**, that at the time the defendant was at least four years older than [REDACTED];

**Four**, that the sexual contact was done with an intent to abuse, humiliate, harass, or degrade [REDACTED], or to arouse or gratify the sexual desire of the defendant;

**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 the defendant guilty of the lesser included offense of abusive sexual contact; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

The crime of aggravated sexual abuse of a child as charged in Counts I, II, and III of the indictment and the lesser included offenses of sexual abuse of a minor and abusive sexual contact include an attempt to engage in those crimes with [REDACTED]. The defendant may be found guilty of an attempt if he had the specific intent to engage in a sexual act (or sexual contact for purposes of the second lesser included offense) with [REDACTED] and voluntarily and intentionally carried out some act which was a substantial step toward the sexual act (or sexual contact for purposes of the second lesser included offense).

A substantial step, as used in this instruction, must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime. 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 crime and be of such a nature that a reasonable observer, viewing it in context, could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute.

INSTRUCTION NO. 13

In the crime of aggravated sexual abuse of a child as charged in Count III of the indictment and the lesser included offense of abusive sexual contact as set forth in instruction 11 regarding the second lesser included offense, there must exist in the mind of the defendant the specific intent to abuse, humiliate, harass, or degrade the alleged victim, or to arouse and gratify the defendant's sexual desire. Likewise, for the first lesser included offense, there must be such specific intent if the sexual act on which the conviction rests is penetration of the genital opening by a hand or finger.

If the defendant acted without such specific intent, crimes of aggravated sexual abuse of a child as charged in the indictment and the lesser included offense of abusive sexual contact (or sexual abuse of a minor if the sexual act on which the conviction rests is penetration of the genital opening by a hand or finger) have not been committed.

INSTRUCTION NO. 14

You have heard testimony that the defendant made a statement to an FBI task force officer. 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 of the evidence, including the circumstances under which the statement may have been made.

INSTRUCTION NO. 15

You have heard evidence that the defendant may have previously committed other offenses of sexual assault and attempted sexual assault. 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 proven, you must disregard them. If you find that these offenses have been proven, 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 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 indictment, and to determine the defendant's intent, motive, plan, design, or opportunity to commit the acts charged in the 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. 16

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

Counsel for the government, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that the place where the alleged incident is 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 offense is claimed to have occurred is in Indian country.

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 government 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

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. 19

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—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 government 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 telephone, cell phone, smart phone, iPhone, Blackberry, 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, or Twitter, 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  
NORTHERN DIVISION

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>IRA ALAN ARIAS,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">1:17-CR-10025-RAL</p> <p style="text-align: center;">VERDICT FORM</p>
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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 Ira Alan Arias, \_\_\_\_\_ (fill in either "not guilty" or "guilty") of aggravated sexual abuse of a child involving a sexual act of penis to vulva contact as charged in Count I of the indictment.
2. We find the defendant Ira Alan Arias, \_\_\_\_\_ (fill in either "not guilty" or "guilty") of aggravated sexual abuse of a child involving a sexual act of mouth to vulva contact as charged in Count II of the indictment.
3. We find the defendant Ira Alan Arias, \_\_\_\_\_ (fill in either "not guilty" or "guilty") of aggravated sexual abuse of a child involving digital penetration of the vulva as charged in Count III of the indictment.
4. *Answer if, and only if, you found the defendant "not guilty" as to aggravated sexual abuse of a child in Parts 1, 2, and 3 of this form, or if, after all reasonable efforts, you are unable to reach a verdict as to aggravated sexual abuse of a child. If you found the defendant "guilty" on Part 1, 2, or 3, then leave this Part 4 blank.*  
We find the defendant Ira Alan Arias, \_\_\_\_\_ (fill in either "not guilty" or "guilty") of the lesser included offense of sexual abuse of a minor.
5. *Answer if, and only if, you found the defendant "not guilty" as to aggravated sexual abuse of a child and "not guilty" of the first lesser included offense of sexual abuse of a minor, or if, after all reasonable efforts, you are unable to reach a verdict as to the charged crimes and the first lesser included offense. If you found the defendant "guilty" on Part 1, 2, 3, or 4, then leave this Part 5 blank.*  
We find the defendant Ira Alan Arias, \_\_\_\_\_ (fill in either "not guilty" or "guilty") of the lesser included offense of abusive sexual contact.

Dated April \_\_\_\_, 2018

\_\_\_\_\_  
Foreperson