

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.

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. This is true even though some of those I gave you at the beginning of the trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, 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 any 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 will 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.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 4

There is nothing particularly different in the way that you should consider the evidence in a trial from that in which any reasonable and careful person would treat any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case. Use the evidence only for those purposes for which it has been received and give the evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions of the Court. Remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence because the burden of proving guilt beyond a reasonable doubt is always assumed by the government.

INSTRUCTION NO. 5

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes no distinction between the weight or value 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 him not guilty.

INSTRUCTION NO. 6

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.

INSTRUCTION NO. 7

If you took notes during the trial, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the proceedings. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

INSTRUCTION NO. 8

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become 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.

INSTRUCTION NO. 9

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.

INSTRUCTION NO. 10

The Indictment in this case charges two crimes against the Defendant, Jeremy Aungie.

Count 1 of the Indictment charges that on or about between June 22, 2012, and June 21, 2013, near Wagner, in Charles Mix County, in Indian country, in the District of South Dakota, Jeremy Aungie, an Indian, did knowingly engage in and attempt to engage in a sexual act with A.A., a child who had not attained the age of 12 years, in violation of 18 U.S.C. §§ 1153, 2241(c) and 2246(2)(A).

Count 2 of the Indictment charges that between on or about August 16, 2017, and May 16, 2018, near Wagner, in Charles Mix County, in Indian country, in the District of South Dakota, Jeremy Aungie, an Indian, did knowingly engage in and attempt to engage in a sexual act with A.A, a child who had attained the age of 12 years but had not attained the age of 16 years and was at least four years younger than Jeremy Aungie, that is, contact between Jeremy Aungie's penis and A.A.'s vulva, by the use of force, in violation of 18 U.S.C. §§ 1153, 2241(c) and 2246(2)(A).

The Defendant has pleaded not guilty to these charges. There is no burden upon the Defendant to prove that he is innocent of the charges against him. Accordingly, the fact that the Defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 11

You must presume that the Defendant is innocent of the crimes charged against him. The indictment is only a formal method of beginning a criminal case. It does not create any presumption of guilt; it is merely an accusation. The fact that a person has been indicted does not create any inference, nor is it evidence, that he is guilty of a crime. The presumption of innocence alone is sufficient to acquit the Defendant unless you as jurors are satisfied beyond a reasonable doubt of the Defendant's guilt of the crimes charged from all the evidence that has been introduced in the case against him.

The burden is always upon the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. Unless the government proves, beyond a reasonable doubt, that the Defendant committed each and every element of an offense charged against him in the Indictment, you must find the Defendant not guilty of that offense.

There is no burden upon the Defendant to prove that he is innocent.

INSTRUCTION NO. 12

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 must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in life's most important decisions. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 13

The Indictment charges that the offenses alleged were committed “on or about” between certain dates. Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed on a date reasonably near the dates alleged in the Indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

INSTRUCTION NO. 14

<Intentionally left blank.>

INSTRUCTION NO. 15

The Defendant is not charged with committing any crime other than those charged in the Indictment. You have heard evidence of acts of a different nature than those charged in the Indictment allegedly done by the Defendant. Remember, even if you find that the Defendant may have committed other acts in the past, this is not evidence that he committed the acts charged in the Indictment. You may not convict a person simply because you believe he may have committed other acts in the past of a different nature than those charged in the Indictment.

INSTRUCTION NO. 16

Section 2241(c) of Title 18 of the United States Code provides, in pertinent part, that:

Whoever . . . knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act by use of force with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging),

or attempts to do so,

...

shall be guilty of an offense against the United States.

INSTRUCTION NO. 17

The crime of Aggravated Sexual Abuse, as charged against Jeremy Aungie in Count 1 of the Indictment, has five essential elements, which are:

One, that between on or about June 22, 2012, and June 21, 2013, Jeremy Aungie did engage in or attempt to engage in a sexual act with A.A.;

Two, that Jeremy Aungie did such act knowingly;

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

Four, that Jeremy Aungie is an Indian;

Five, that the offense took place in Indian country in the District of South Dakota.

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

INSTRUCTION NO. 18

The crime of Aggravated Sexual Abuse, as charged against Jeremy Aungie in Count 2 of the Indictment, has seven essential elements, which are:

One, that between on or about August 16, 2017, and May 16, 2018, Jeremy Aungie did engage in or attempt to engage in a sexual act with A.A.;

Two, that Jeremy Aungie did so by using force against A.A.;

Three, that Jeremy Aungie did such act knowingly;

Four, that at the time of the offense, A.A. had attained the age of 12 years, but had not attained the age of 16 years;

Five, that at the time of the offense, A.A. was at least 4 years younger than Jeremy Aungie;

Six, that Jeremy Aungie is an Indian;

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

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

INSTRUCTION NO. 19

The Indictment in this case alleges that the Defendant is an Indian and that offenses charged in the Indictment against the Defendant occurred in Indian country.

Counsel for the government, counsel for the Defendant and the Defendant have agreed or stipulated that the Defendant is an Indian and that the location, near Wagner, South Dakota, where the alleged offenses are claimed to have occurred, is within the territorial jurisdiction of the United States by being in Indian country on the Yankton Indian Reservation.

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 and that the location, near Wagner, South Dakota, where the alleged offenses are claimed to have occurred, is within the territorial jurisdiction of the United States by being in Indian country on the Yankton Indian Reservation.

INSTRUCTION NO. 20

The term "sexual act" as used within these instructions is defined as:

- A) Contact between the penis and the vulva or the penis and the anus, and contact involving the penis occurs upon penetration, however slight;
- B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- C) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- D) 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.

INSTRUCTION NO. 21

A person may be found guilty of an “attempt,” as used in these instructions, if he intended to engage in a sexual act and voluntarily and intentionally carried out some act which was a substantial step toward engaging in a sexual act.

A “substantial step” 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 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. 22

The term "force," as used in these instructions, means the use, or threatened use, of a weapon; the use of such physical force as is sufficient to overcome, restrain, or injure a person; the use of a threat of harm sufficient to coerce or compel submission by the victim; or the use of force sufficient to prevent the alleged victim from escaping the sexual act.

INSTRUCTION NO. 23

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I will 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, 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 vote stands numerically.

Fifth, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. The verdicts, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decisions that you reach in this case. You will take this form to the jury room, and when each of you has agreed upon the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal that you are ready to return to the courtroom.

Dated this 5th day of June, 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lawrence L. Piersol", written over a horizontal line.

Lawrence L. Piersol
United States District Judge

ATTEST:

MATTHEW W. THIELEN, CLERK

A handwritten signature in blue ink, appearing to read "Matthew Thielen", written over a horizontal line.