

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ISADORE JOHN CONQUERING BEAR,

Defendant.

3:17-CR-30110-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

The superseding indictment in this case charges the defendant with two different crimes. The defendant is charged with one count of aggravated sexual abuse and one count of sexual abuse. 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.

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 United States 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. 6

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' 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. 7

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

***One*, that on or about the 11th day of June, 2017, Isadore John Conquering Bear did knowingly cause or attempt to cause Britnee Rattling Leaf to engage in a sexual act;**

***Two*, that Isadore John Conquering Bear did so by using force against Britnee Rattling Leaf and without the consent of Britnee Rattling Leaf;**

***Three*, that Isadore John Conquering Bear is an Indian; and**

***Four*, that the offense took place in Indian country.**

If all of these elements have been proved beyond a reasonable doubt as to Isadore John Conquering Bear, then you must find him guilty of the crime charged under Count I. Otherwise you must find him not guilty of this crime under Count I.

INSTRUCTION NO. 8

The crime of sexual abuse, as charged in Count II of the superseding indictment, has five elements, which are:

***One*, that on or about the 11th day of June, 2017, Isadore John Conquering Bear did knowingly engage in a sexual act with Britnee Rattling Leaf, or attempt to engage in a sexual act with Britnee Rattling Leaf;**

***Two*, that at the time of the sexual act, Britnee Rattling Leaf was incapable of appraising the nature of the conduct, or was physically incapable of declining participation in the sexual act, or was physically incapable of communicating an unwillingness to engage in the sexual act;**

***Three*, that Isadore John Conquering Bear knew Britnee Rattling Leaf was incapable of appraising the nature of the conduct, or was physically incapable of declining participation in the sexual act, or was physically incapable of communicating an unwillingness to engage in the sexual act;**

***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 Isadore John Conquering Bear, then you must find him guilty of the crime charged under Count II. Otherwise you must find him not guilty of this crime under Count II.

INSTRUCTION NO. 9

The term "sexual act" as used in these instructions means contact between the penis and the vulva; contact involving the penis occurs upon penetration, however slight. A sexual act is not a crime if both parties consent to it occurring.

INSTRUCTION NO. 10

The term "force" as used in these instructions 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.

INSTRUCTION NO. 11

The crimes charged in the superseding indictment include an attempt to engage in a sexual act. A person may be found guilty of an attempt if he intended to engage in the sexual act and voluntarily and intentionally carried out some act which was a substantial step toward the 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 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. 12

To find the defendant guilty on either count based on an attempt to engage in a sexual act, there must exist in the mind of the defendant the specific intent to attempt the sexual act described in those counts. Being under the influence of alcohol provides a legal excuse for the commission of a crime only if the effect of the alcohol makes it impossible for the defendant to have the specific intent to attempt to commit the act charged. Evidence that the defendant acted while under the influence of alcohol may be considered by you, together with all the other evidence, in determining whether or not he did in fact have such specific intent to attempt the sexual act described in those counts. If the defendant acted without such specific intent, the attempt to commit such crimes has not been committed.

INSTRUCTION NO. 13

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.

INSTRUCTION NO. 14

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.

INSTRUCTION NO. 15

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. 16

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 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 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, 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.

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VERDICT FORM

We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find Defendant Isadore John Conquering Bear _____ (fill in either “not guilty” or “guilty”) of aggravated sexual abuse as charged in Count I of the superseding indictment.
2. We find Defendant Isadore John Conquering Bear _____ (fill in either “not guilty” or “guilty”) of sexual abuse as charged in Count II of the superseding indictment.

Dated October ____, 2018

Foreperson