

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

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| <p>UNITED STATES OF AMERICA,<br/><br/>                                Plaintiff,<br/><br/>                                vs.<br/><br/>LAWRENCE OAKIE,<br/>a/k/a “LBJ”,<br/><br/>                                Defendant.</p> | <p><b>3:18-CR-30039-RAL</b></p><br><br><p><b>FINAL JURY INSTRUCTIONS</b></p> |
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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. Anything you saw or heard about this case outside the courtroom is not evidence.

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 5

You have heard evidence that the defendant may have previously committed another alleged act of child molestation for which he has not been convicted. You are not to speculate whether the defendant has or has not been charged for this other alleged act. The defendant is not on trial here for this other alleged act. 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 preponderance of the evidence standard is a lower standard than proof beyond a reasonable doubt.

If you find that this other alleged act has not been proved by a preponderance of the evidence, you must disregard it entirely. If you find that this other alleged act has been proved by a preponderance of the evidence, you may consider it to help you decide any matter to which it is relevant. You should give it the weight and value, if any, you believe it is entitled to receive.

Remember, the defendant is on trial only for the crimes charged. The government has to prove each and every element of crimes charged in this case beyond a reasonable doubt. You may not convict a person simply because you believe he may have committed similar acts in the past.

INSTRUCTION NO. 6

The indictment in this case charges the defendant with three counts of abusive sexual contact 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 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 government throughout the trial. 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. 7

The crime of abusive sexual contact, as charged in Counts I through III of the indictment, has five elements, which are:

***One, that on or about the 3rd day of September 2017, the defendant, Lawrence Oakie, did knowingly and intentionally engage in sexual contact with B.W. or knowingly and intentionally attempted to engage in sexual contact with B.W.;***

To convict on Count I, you must find beyond a reasonable doubt that Defendant Lawrence Oakie knowingly and intentionally engaged in, or attempted to engage in, sexual contact over the clothing with the breast of B.W.

To convict on Count II, you must find beyond a reasonable doubt that Defendant Lawrence Oakie knowingly and intentionally engaged in, or attempted to engage in, sexual contact over the clothing with the genitalia, groin, or inner thigh of B.W.

To convict on Count III, you must find beyond a reasonable doubt that Defendant Lawrence Oakie knowingly and intentionally engaged in, or attempted to engage in, sexual contact over the clothing with the buttocks or anus of B.W.

***Two, that B.W. had not attained the age of 12 at the time of the offense;***

***Three, that the sexual contact was done with an intent to abuse, humiliate, harass, or degrade B.W., or to arouse or gratify the sexual desire of the defendant;***

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



INSTRUCTION NO. 8

The crime of abusive sexual contact includes an attempt to engage in that crime with B.W. The defendant may be found guilty of an attempt if he intended to engage in sexual contact with B.W. and voluntarily and intentionally carried out some act which was a substantial step toward the sexual contact.

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. 9

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. 10

Intent 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. 11

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 incident alleged in the indictment is claimed to have occurred is in Indian country.

The defendant has not, by entering this agreement or stipulation, admitted his guilt of the offense 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. 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, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

### INSTRUCTION NO. 13

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

1. We find Defendant Lawrence Oakie, \_\_\_\_\_ (fill in either "not guilty" or "guilty") of abusive sexual contact of a child as charged in Count I of the indictment in that the such contact involved the defendant touching or attempting to touch over the clothing the breast of B.W.
2. We find Defendant Lawrence Oakie, \_\_\_\_\_ (fill in either "not guilty" or "guilty") of abusive sexual contact of a child as charged in Count II of the indictment in that the such contact involved the defendant touching or attempting to touch over the clothing the genitalia, groin, or inner thigh of B.W.
3. We find Defendant Lawrence Oakie, \_\_\_\_\_ (fill in either "not guilty" or "guilty") of abusive sexual contact of a child as charged in Count III of the indictment in that the such contact involved the defendant touching or attempting to touch over the clothing the buttocks or anus of B.W.

Dated September \_\_\_\_, 2019

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Foreperson