

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. KIMO JOHN LITTLE BIRD, SR., Defendant.</p>	<p>CR 20-10012-CBK JURY INSTRUCTIONS</p>
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INSTRUCTION NO. 1

Ladies and gentlemen of the jury, it is my duty now to explain the rules of law you must apply to this case.

You as jurors are the sole judges of the facts. But it is your duty to follow the law stated in these instructions, and to apply that law to the facts as you find them from the evidence before you. I also gave you instructions during the trial and you must follow those instructions. It would be a violation of your sworn duty to base your verdicts upon any rules of law other than the ones given you in these instructions, regardless of your personal feelings as to what the law ought to be.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

INSTRUCTION NO. 2

You have been chosen and sworn as jurors to try the issues of fact presented by the allegations of the indictment and the denials made by the defendant in his pleas of “not guilty.” You are to perform this duty without bias or prejudice, because the law does not permit jurors to be governed by sympathy or public opinion. The accused and the public expect that you will carefully and impartially consider all of the evidence and will follow the law as stated by the Court, in order to reach just verdicts, regardless of the consequences to any party.

INSTRUCTION NO. 3

The indictment in this case charges the defendant with the crimes of aggravated sexual abuse of a child, sexual abuse of a person incapable of consent, two counts of felony sex offense against a minor while required to register as a sex-offender, and tampering with a witness. The defendant has pleaded not guilty to these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Therefore, the defendant, even though charged, begins the trial with no evidence against him. This presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged.

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

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

INSTRUCTION NO. 4

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. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 5

I have mentioned the word “evidence.” The evidence in this case consists of the testimony of witnesses, and the documents and other things received as exhibits.

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 and questions that I struck from the record, or told you to disregard, are not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

INSTRUCTION NO. 6

There are two types of evidence from which you may find the truth as to the facts of a case -- direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of the defendant. The law makes no distinction between the weight 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 the defendant not guilty.

INSTRUCTION NO. 7

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.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. §

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of a greater credence. 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. 9

If you find that the defendant attempted to influence a witness in connection with the crimes charged in this case, this evidence may be considered by you in light of all the other evidence in the case. You may consider whether this evidence shows a consciousness of guilt or innocence and determine the significance to be attached to any such conduct.

INSTRUCTION NO. 10

You have heard testimony from a person described as an expert. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state opinions on matters in that field and may also state the reasons for those opinions.

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. 11

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

1. On or about between June 2, 2016, and July 24, 2016, the defendant voluntarily and intentionally caused, or attempted to cause, to engage in a sexual act, that is, the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 12 years with an intent to abuse, humiliate, harass, or degrade or to arouse or gratify the sexual desire of the defendant.
2. At the time of the alleged offense, had not attained the age of 12 years.
3. The defendant is an Indian; and
4. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime charged in Count I of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

The crime of aggravated sexual abuse of a child by one under a legal requirement to register as a sex offender, as charged in Count II of the indictment, has two essential elements, which are:

1. On or about between June 2, 2016, and July 24, 2016, the defendant committed aggravated sexual abuse of a child as charged in Count I of the indictment, and
2. At the time the defendant committed the offense the defendant was required by federal, state, or tribal law to register as a sex offender.

For you to find the defendant guilty of this crime charged in Count II of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 13

The crime of sexual abuse of a person incapable of consent, as charged in Count III of the indictment, has five essential elements, which are:

1. On or about between January 1, 2012, and December 31, 2012, the defendant voluntarily and intentionally caused, or attempted to cause, _____ to engage in a sexual act as defined in Instruction No. 14.
2. At the time of the alleged offense, _____ was incapable of appraising the nature of the conduct or was physically incapable of declining participation in or communicating an unwillingness to engage in the sexual act.
3. At that time, the defendant knew _____ was incapable of appraising the nature of the conduct or was physically incapable of declining participation in or communicating an unwillingness to engage in the sexual act.
4. The defendant is an Indian; and
5. The alleged offense occurred in Indian Country.

For you to find the defendant guilty of this crime charged in Count III of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 14

The term sexual act as used in Instruction No. 13 means:

1. The penetration, however slight, of the anal or genital opening of another by a hand or finger, with an intent to abuse, humiliate, harass, or degrade the alleged victim, or to arouse or gratify the sexual desire of the defendant;
or
2. 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, or degrade the child, or to arouse or gratify the sexual desire of the defendant.

You must unanimously agree as to the sexual act involved in order to find that the defendant engaged in a sexual act as to Count III.

INSTRUCTION NO. 15

The crime of sexual abuse of a person incapable of consent by one under a legal requirement to register as a sex offender, as charged in Count IV of the indictment, has two essential elements, which are:

1. On or about between January 1, 2012, and December 31, 2012, the defendant committed sexual abuse of a person incapable of consent, as charged in Count III of the indictment, and
2. At the time the defendant committed the offense the defendant was required by federal, state, or tribal law to register as a sex offender.

For you to find the defendant guilty of this crime charged in Count IV of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 16

The crime of tampering with a witness, as charged in Count V of the indictment, has two essential elements, which are:

1. On or about between June 8, 2021, and October 13, 2021, the defendant knowingly corruptly persuaded or attempted to corruptly persuade Priscilla Little Dog, Brianne Little Bird or _____
2. That defendant did so with the intent to hinder, delay, or prevent the testimony of _____ or _____ in the criminal case of United States of America v. Kimo John Little Bird, Sr., CR 20-10012.

You must unanimously agree which person or persons were subject to being corruptly persuaded, or were attempted to be corruptly persuaded, in order to find the defendant guilty as to Count V.

To corruptly persuade someone means to persuade or attempt to persuade with consciousness of wrongdoing.

To act with "intent to influence" the testimony of a person means to act for the purpose of getting the person to change or color or shade her testimony in some way. It is not necessary for the government to prove that the person's testimony was, in fact, changed in any way.

For you to find the defendant guilty of the crime charged in Count V of the indictment, the government must prove all of these elements beyond a reasonable doubt. Otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 16A

The crimes charged in the indictment include attempts to commit a crime. The defendant may be found guilty of an attempt if he intended to engage in the activities alleged in the indictment and he knowingly and intentionally carried out some act which was a substantial step toward the commission of the crime in question.

INSTRUCTION NO. 17

Intent may be proved like anything else. You may consider any statements and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a 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. 18

Flight by the defendant, after the events charged in the Indictment occurred, does not create a presumption of guilt. You may consider evidence of flight, however, as tending to prove the defendant's consciousness of guilt. You are not required to do so. You should consider and weigh evidence of flight by the defendant in connection with all the other evidence in the case and give it such weight as in your judgment it is fairly entitled to receive.

Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to any such evidence are matters exclusively within the province of the jury. In your consideration of the evidence of flight you should consider that there may be reasons for this which are fully consistent with innocence.

INSTRUCTION NO. 19

The indictment charges that the offenses were committed “on or about between” certain dates. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged.

INSTRUCTION NO. 20

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

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that defendant is an Indian and that the place where the alleged incidents are 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 offenses are claimed to have occurred is in Indian country.

INSTRUCTION NO. 21

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

A verdict form has been prepared for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdicts, you will have your foreperson fill in, date, and sign the form to state the verdicts upon which you unanimously agree, and then notify the marshal that you have a verdict.

INSTRUCTION NO. 22

The verdicts must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdicts must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 23

If you have questions, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury.

You will note from the oath about to be taken by the marshal that he, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached unanimous verdicts.

INSTRUCTION NO. 24

It is proper to add a final caution.

Nothing that I have said in these instructions, and nothing that I have said or done during the trial, has been said or done to suggest to you what I think your verdicts should be.

What the verdicts shall be is your exclusive duty and responsibility.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. KIMO JOHN LITTLE BIRD, SR., Defendant.</p>	<p>CR 20-10012-CBK VERDICT</p>
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Please return a verdict by placing an "X" in the space provided.

COUNT I

We, the jury in the above-entitled action, as to the crime of aggravated sexual abuse of a child, as charged in Count I of the indictment, find Kimo John Little Bird, Sr.:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Kimo John Little Bird, Sr. GUILTY of the crime of aggravated sexual abuse as charged in Count I of the indictment then you must deliberate on Count II.

COUNT II

We, the jury in the above-entitled action, as to the crime of felony sex offense against a minor while required to register as a sex-offender, as charged in Count II of the indictment, find Kimo John Little Bird, Sr.:

_____ NOT GUILTY _____ GUILTY

COUNT III

We, the jury in the above-entitled action, as to the crime of sexual abuse of a person incapable of consent as charged in Count III of the indictment, find Kimo John Little Bird, Sr.:

_____ NOT GUILTY _____ GUILTY

If, and only if, you found Kimo John Little Bird, Sr. GUILTY of the crime of sexual abuse of a person incapable of consent as charged in Count III of the indictment, then you must deliberate on Count IV.

COUNT IV

We, the jury in the above-entitled action, as to the crime of felony sex offense against a minor while required to register as a sex-offender, as charged in Count IV of the indictment, find Kimo John Little Bird, Sr.:

_____ NOT GUILTY _____ GUILTY

COUNT V

We, the jury in the above-entitled action, as to the crime of tampering with a witness, as charged in Count V of the indictment, find Kimo John Little Bird, Sr.:

_____ NOT GUILTY _____ GUILTY

Dated this _____ day of November, 2021.

Foreperson