

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 – AGGRAVATED SEXUAL ABUSE OF A MINOR
UNDER TWELVE YEARS OLD

For you to find Wilbur Morrison, Jr., guilty of the offense of aggravated sexual abuse of a minor under twelve years old charged in Count 1 of the Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that on or about between August 1, 2022, and January 12, 2023, Wilbur Morrison, Jr., engaged or attempted to engage in a sexual act, that is contact between the penis and the vulva, with S.M.;

As relevant here, the term “sexual act” is defined as:

Contact between the penis and the vulva or the penis and the anus, and contact involving the penis occurs upon penetration, however slight.

A person may be found guilty of an attempt 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 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.

Two, that Wilbur Morrison, Jr., did such act knowingly;

An act is done “knowingly” if the defendant is aware of the act and does not act, or fail to 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.

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant—except whether or not he testified in court—and all the facts and circumstances in evidence which may aid in a determination of the defendant’s knowledge or 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.

Three, that at the time of the sexual act S.M. had not attained the age of 12 years;

Four, that Wilbur Morrison, Jr., is an Indian;

A person is considered an "Indian" if that person has some Indian blood and if that person is recognized as an Indian. To determine whether the person is recognized as an Indian, you may consider the following factors:

- 1) Whether the person is enrolled in a tribe.
- 2) Whether the government has provided the person with assistance reserved only to Indians.
- 3) Whether the person enjoys the benefits of tribal affiliation.
- 4) Whether the person is socially recognized as an Indian because he lives on the reservation and participates in Indian social life.

And five, that the offense took place in Indian Country, near Porcupine, in the District of South Dakota.

The term "Indian country," includes: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

For you to find Wilbur Morrison, Jr., guilty of the offense charged in Count 1 of the Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. Otherwise, you must find Wilbur Morrison, Jr., not guilty of the offense charged in Count 1 of the Superseding Indictment.

FINAL INSTRUCTION NO. 3 – AGGRAVATED SEXUAL ABUSE OF A MINOR
UNDER TWELVE YEARS OLD

For you to find Wilbur Morrison, Jr., guilty of the offense of aggravated sexual abuse of a minor under twelve years old charged in Count 2 of the Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that on or about between August 1, 2022, and January 12, 2023, Wilbur Morrison, Jr., engaged or attempted to engage in a sexual act, that is contact between the penis and the anus, with S.M.;

The term “sexual act” was defined for you in Final Jury Instruction No. 2.

A person may be found guilty of an attempt 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.

The term “substantial step” was defined for you in Final Jury Instruction No. 2.

Two, that Wilbur Morrison, Jr., did such act knowingly;

A description of what it means to act with intent or knowledge is included in Final Instruction No. 2.

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

Four, that Wilbur Morrison, Jr., is an Indian;

The term “Indian” was defined for you in Final Jury Instruction No. 2.

And five, that the offense took place in Indian Country, near Porcupine, in the District of South Dakota.

The term “Indian Country” was defined for you in Final Jury Instruction No. 2.

For you to find Wilbur Morrison, Jr., guilty of the offense charged in Count 2 of the Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. Otherwise, you must find

Wilbur Morrison, Jr., not guilty of the offense charged in Count 2 of the Superseding Indictment.

FINAL INSTRUCTION NO. 4 – ASSAULT RESULTING IN SERIOUS BODILY
INJURY

For you to find Wilbur Morrison, Jr., guilty of assault resulting in serious bodily injury charged in Count 3 of the Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, that on or about between August 1, 2022, and January 12, 2023, Wilbur Morrison, Jr., assaulted S.M.;

“Assault” means any intentional and voluntary attempt or threat to injure another person, combined with the apparent present ability to do so, which is sufficient to put the other person in fear of immediate bodily harm or any intentional and voluntary harmful and offensive touching of another person without justification or excuse.

Two, that as a result of that assault S.M. suffered serious bodily injury;

“Serious bodily injury” means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the functions of a bodily member, organ or mental faculty.

Three, that the assault took place in Indian Country, near Porcupine, in the District of South Dakota;

The term “Indian Country” was defined for you in Final Jury Instruction No. 2.

And four, that Wilbur Morrison, Jr., is an Indian.

The term “Indian” was defined for you in Final Jury Instruction No. 2.

For you to find Wilbur Morrison, Jr., guilty of the offense charged in Count 3 of the Superseding Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find Wilbur Morrison, Jr., not guilty of the offense charged in Count 3 of the Superseding Indictment.

FINAL INSTRUCTION NO. 5 – IMPEACHMENT

In Preliminary Instruction No. 6, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight, if any, you think it deserves.

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.

FINAL INSTRUCTION NO. 6 – PRESUMPTION OF INNOCENCE AND BURDEN
OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of the offenses charged against him.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.

This burden means that you must find the defendant not guilty of a offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 7 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense, and not doubt based on speculation.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence, or lack of evidence, in the case before making a decision.
- Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 8 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all of the evidence bearing on each element before you.
- Take all the time that you feel is necessary.

Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 9 – DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is guilty or not guilty. If the defendant is guilty, I will decide what the sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant’s race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated February 28, 2024.

BY THE COURT:



KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE