

**UNITED STATES DISTRICT COURT**

**DISTRICT OF SOUTH DAKOTA**

**WESTERN DIVISION**

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>JESSE SIERRA, a/k/a Jesse Sierro, and DUSTIN SIERRA, a/k/a Dustin Sierro,</p> <p>Defendants.</p>	<p>5:19-CR-50110-KES</p> <p><b>FINAL INSTRUCTIONS TO THE JURY</b></p>
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VERDICT FORM

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 – KIDNAPPING

For you to find Jesse Sierra or Dustin Sierra guilty of the offense of kidnapping, as charged in Count 1 of the Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

**One, the defendant, Jesse Sierra or Dustin Sierra, unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away Esther Wolfe without her consent;**

“Kidnap” means to take and carry away a person by force and against her will. “Seize,” “confine,” “abduct,” and “carry away” all mean the taking and carrying away of a person, or holding of someone by force or without that person’s consent. “Inveigle” means to entice, lure, or lead astray, by false representations or promises, or by other deceitful means. “Decoy” means enticement or luring by means of some fraud, trick, or temptation.

**Two, the defendant held Esther Wolfe for ransom or reward or otherwise;**

The “or otherwise” is satisfied if the person kidnapped was taken for some reason that the defendant considered of sufficient benefit to him, or for some purpose of the defendant’s own.

**Three, the defendant voluntarily and intentionally transported Esther Wolfe, while she was unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away; and**

Intent or knowledge may be proved like anything else. You may consider statements made and acts done by the defendant, and all the facts and circumstances in evidence that 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.

**Four, the transportation was in interstate commerce.**

“Interstate commerce” means commerce or travel between one state and another state. The government must prove that the defendant crossed a state line while intentionally transporting

Esther Wolfe. The government is not required to prove that the defendant knew he crossed a state line.

For you to find Jesse Sierra or Dustin Sierra guilty of Count 1 charged in the Superseding Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. If the government has not proved all four elements, then you need to consider whether Jesse or Dustin Sierra is guilty by aiding and abetting, which is described for you in Final Instruction No. 8. If you find that the prosecution has not proved each of the elements of kidnapping or the elements of aiding and abetting kidnapping, then you must find Jesse Sierra or Dustin Sierra not guilty of Count 1 charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 3 – AGGRAVATED SEXUAL ABUSE

For you to find Jesse Sierra guilty of the offense of aggravated sexual abuse, as 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 July 13, 2019, and July 21, 2019, inclusive, Jesse Sierra caused Esther Wolfe to engage in a sexual act or attempted to do so;**

The term “sexual act” means contact between the penis and the vulva or between the penis and the mouth. 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 that statute.

**Two, that Jesse Sierra did so by using force against Esther Wolfe and without her consent;**

The term “force” means the use or threatened use of a weapon; the use of physical force sufficient to overcome, restrain, or injure the alleged victim; a threat of harm sufficient to coerce or compel submission by 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.

Consent may be verbal or implied based on the facts, circumstances, and evidence presented to you. Violent sex acts that are nonetheless consensual between the parties are not a crime.

**Three, that Jesse Sierra did such act knowingly;**

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. The prosecution is not required to prove that the defendant knew his acts or omissions were unlawful.

**Four, that Jesse Sierra is an Indian; and**

Counsel for the United States, counsel for Jesse Sierra, and Jesse Sierra have agreed or stipulated that Jesse Sierra is an Indian.

The defendant has not, by entering into 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 present to the jury the fact that Jesse Sierra is an Indian.

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

Counsel for the United States, counsel for Jesse Sierra, and Jesse Sierra have agreed or stipulated that the alleged assault occurred on the Pine Ridge Reservation, in Indian Country, in South Dakota.

Jesse Sierra has not, by entering into this agreement or stipulation, admitted his guilt of the offense charged, and you may not draw any inference of guilt from this stipulation. The only effect of this stipulation is to present to the jury the fact that the alleged assault occurred on the Pine Ridge Reservation, in Indian Country, in South Dakota.

For you to find Jesse Sierra 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 Jesse Sierra not guilty of the offense charged in Count 2 of the Superseding Indictment.

FINAL INSTRUCTION NO. 4 – AGGRAVATED SEXUAL ABUSE

For you to find Jesse Sierra guilty of the offense of aggravated sexual abuse, as charged in Count 3 of the Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

**One, that on or about between July 13, 2019, and July 21, 2019, inclusive, Jesse Sierra caused Esther Wolfe to engage in a sexual act or attempted to do so;**

The same instructions provided to you under Element One of Aggravated Sexual Abuse (Final Instruction No. 3) defining “sexual act” and “attempt” also apply to this element of Aggravated Sexual Abuse.

**Two, that Jesse Sierra did so by using force against Esther Wolfe and without her consent;**

The same instructions provided to you under Element Two of Aggravated Sexual Abuse (Final Instruction No. 3) also apply to this element of Aggravated Sexual Abuse.

**Three, that Jesse Sierra did such act knowingly;**

The same instructions provided to you under Element Three of Aggravated Sexual Abuse (Final Instruction No. 3) also apply to this element of Aggravated Sexual Abuse.

**Four, that Jesse Sierra is an Indian; and**

The same instructions provided to you under Element Four of Aggravated Sexual Abuse (Final Instruction No. 3) also apply to this element of Aggravated Sexual Abuse.

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

The same instructions provided to you under Element Five of Aggravated Sexual Abuse (Final Instruction No. 3) also apply to this element of Aggravated Sexual Abuse.

For you to find Jesse Sierra guilty of the offense charged in Count 3 of the Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. Otherwise, you must find

Jesse Sierra not guilty of the offense charged in Count 3 of the Superseding Indictment.



FINAL INSTRUCTION NO. 5 – INTERSTATE DOMESTIC VIOLENCE

For you to find Jesse Sierra or Dustin Sierra guilty of the offense of interstate domestic violence, as charged in Count 4 of the Superseding Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

**One, that the defendant, Jesse Sierra, was a spouse, intimate partner, or dating partner of Esther Wolfe;**

“Spouse” or “intimate partner” means a spouse or former spouse, a person who has a child with Jesse Sierra, a person who has previously or does currently cohabit with Jesse Sierra, or a person with whom Jesse Sierra has a romantic or intimate relationship. The existence of a romantic or intimate relationship can be determined by considering the length and type of the relationship and the frequency of interaction between the persons involved in that relationship.

“Dating partner” means a person who is currently or has been in a romantic or intimate relationship with Jesse Sierra. The existence of such a relationship can be determined by considering the length and type of the relationship and the frequency of interaction between the persons involved in the relationship.

**Two, that Jesse Sierra or Dustin Sierra caused Esther Wolfe to enter or leave Indian Country, to wit, the Pine Ridge Reservation, by force, coercion, duress, or fraud; and**

The term “enter or leave Indian Country” includes leaving or entering the jurisdiction of a tribal government.

Coercion or duress exists when an individual is subject to actual or threatened force of such a nature as to induce a well-founded fear of impending death or serious bodily harm from which there is no reasonable opportunity to escape.

**Three, that in the course of, as a result of, or to facilitate that conduct or travel, Jesse Sierra or Dustin Sierra, committed or attempted to commit a crime of violence against Esther Wolfe.**

“Course of conduct” means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.

“Crime of violence” means an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.

The same instructions provided to you under Element One of Aggravated Sexual Abuse (Final Instruction No. 3) about “attempt” also apply to this element of Interstate Domestic Violence.

For you to find Jesse Sierra or Dustin Sierra guilty of Count 4 charged in the Superseding Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. If the government has not proved all three elements, then you need to consider whether Jesse Sierra or Dustin Sierra is guilty by aiding and abetting, which is described for you in Final Instruction No. 8. If you find that the prosecution has not proved each of the elements of interstate domestic violence or the elements of aiding and abetting interstate domestic violence, then you must find Jesse Sierra or Dustin Sierra not guilty of Count 4 charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 6 – ASSAULT RESULTING IN SERIOUS BODILY  
INJURY

For you to find Jesse Sierra guilty of the offense of assault resulting in serious bodily injury, as charged in Count 5 of the Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

**One, on or about between July 13, 2019, and July 21, 2019, inclusive, Jesse Sierra assaulted Esther Wolfe;**

“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 voluntarily harmful and offensive touching of another person without justification or excuse.

**Two, as a result of that assault Esther Wolfe 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, the assault happened near Oglala and elsewhere, in Indian country, in the District of South Dakota; and**

Counsel for the United States, counsel for Jesse Sierra, and Jesse Sierra have agreed or stipulated that the alleged assault occurred on the Pine Ridge Reservation, in Indian Country, in South Dakota.

Jesse Sierra has not, by entering into this agreement or stipulation, admitted his guilt of the offense charged, and you may not draw any inference of guilt from this stipulation. The only effect of this stipulation is to present to the jury the fact that the alleged assault occurred on the Pine Ridge Reservation, in Indian Country, in South Dakota.

**Four, Jesse Sierra is an Indian.**

Counsel for the United States, counsel for Jesse Sierra, and Jesse Sierra have agreed or stipulated that Jesse Sierra is an Indian.

Jesse Sierra has not, by entering into 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 present to the jury the fact that Jesse Sierra is an Indian.

For you to find Jesse Sierra guilty of the offense charged in Count 5 of the Superseding Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. If the government has not proved all four elements, then you need to consider whether Jesse Sierra is guilty of the lesser-included offense of assault by striking, beating, or wounding, which is described for you in Final Instruction No. 9. If you find Jesse Sierra not guilty of assault by striking, beating, or wounding, then you need to consider whether Jesse Sierra is guilty of the lesser-included offense of simple assault, which is described for you in Final Instruction No. 10. If you find that the prosecution has not proved each of the elements of assault resulting in serious bodily injury, the elements of the lesser-included offense of assault by striking, beating, or wounding, or the elements of the lesser-included offense of simple assault, then you must find Jesse Sierra not guilty of Count 5 charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 7 – ASSAULT BY STRANGULATION OF A DATING  
PARTNER

For you to find Jesse Sierra guilty of the offense of assault by strangulation of a dating partner, as charged in Count 6 of the Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

**One, on or about between July 13, 2019, and July 21, 2019, inclusive, Jesse Sierra assaulted Esther Wolfe;**

“Assault” was defined for you in Element One of Assault Resulting in Serious Bodily Injury (Final Instruction No. 6).

**Two, Jesse Sierra committed that assault by means of strangling or suffocating, or attempting to strangle or suffocate;**

“Strangling” means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or cause protracted injury to the victim.

“Suffocating” means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or cause protracted injury to the victim.

The same instructions provided to you under Element One of Aggravated Sexual Abuse (Final Instruction No. 3) about “attempt” also apply to this element of Assault by Strangulation of a Dating Partner.

**Three, Esther Wolfe was a spouse, intimate partner, or dating partner of Jesse Sierra;**

The same instructions provided to you under Element One of Interstate Domestic Violence (Final Instruction No. 5) also apply to this element of Assault by Strangulation of a Dating Partner.

**Four, the assault happened near Oglala and elsewhere, in Indian country, in the District of South Dakota; and**

The same instructions provided to you under Element Three of Assault Resulting in Bodily Injury (Final Instruction No. 6) also

apply to this element of Assault by Strangulation of a Dating Partner.

***Five, Jesse Sierra is an Indian.***

The same instructions provided to you under Element Four of Assault Resulting in Bodily Injury (Final Instruction No. 6) also apply to this element of Assault by Strangulation of a Dating Partner.

For you to find Jesse Sierra guilty of the offense charged in Count 6 of the Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. If the government has not proved all five elements, then you need to consider whether Jesse Sierra is guilty of the lesser-included offense of simple assault, which is described for you in Final Instruction No. 10. If you find that the prosecution has not proved each of the elements of assault by strangulation of a dating partner or the elements of the lesser-included offense of simple assault, then you must find Jesse Sierra not guilty of Count 6 charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 8 – AIDING AND ABETTING

Jessie Sierra or Dustin Sierra may be guilty of Kidnapping (Final Instruction No. 2) or Interstate Domestic Violence (Final Instruction No. 5) even if he personally did not do every act constituting that offense, if he aided and abetted that offense.

In order to have aided and abetted the commission of a crime, a person must, before or at the time the crime was committed:

***One, have known that the crime was being committed or going to be committed;***

***Two, have had enough advance knowledge of the extent and character of that crime that he was able to make the relevant choice to walk away from the crime before all the elements of that crime were complete; and***

***Three, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of that crime.***

For you to find Jesse Sierra or Dustin Sierra guilty of Kidnapping or Interstate Domestic Violence by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all the essential elements of that crime were committed by some person or persons and that Jesse Sierra or Dustin Sierra aided and abetted the commission of that crime.

You should understand that merely acting in the same way as others or merely associating with others does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or is about to be committed, but who happens to act in a way that advances some offense, does not thereby become an aider and abettor.

FINAL INSTRUCTION NO. 9 – LESSER-INCLUDED OFFENSE OF ASSAULT  
BY STRIKING, BEATING, OR WOUNDING

If your verdict for Assault Resulting in Serious Bodily Injury (Final Instruction No. 6) is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on this charge, you should record that decision on the verdict form and go on to consider whether Jesse Sierra is guilty of Assault by Striking, Beating, or Wounding, a lesser-included offense of Assault Resulting in Serious Bodily Injury. The crime of Assault by Striking, Beating, or Wounding has three elements:

**One, on or about between July 13, 2019, and July 21, 2019, inclusive, Jesse Sierra assaulted Esther Wolfe by means of striking, beating, or wounding;**

“Assault” was defined for you in Element One of Assault Resulting in Serious Bodily Injury (Final Instruction No. 6).

**Two, the assault happened near Ogalala and elsewhere, in Indian Country, in the District of South Dakota; and**

The same instructions provided to you under Element Three of Assault Resulting in Bodily Injury (Final Instruction No. 6) also apply to this element of Simple Assault.

**Three, Jesse Sierra is an Indian.**

The same instructions provided to you under Element Four of Assault Resulting in Bodily Injury (Final Instruction No. 6) also apply to this element of Simple Assault.

For you to find Jesse Sierra guilty of Assault by Striking, Beating, or Wounding, a lesser-included offense of Assault Resulting in Serious Bodily Injury, the prosecution must prove all three elements beyond a reasonable doubt. Otherwise, you must find Jesse Sierra not guilty of this crime.



FINAL INSTRUCTION NO. 10 – LESSER INCLUDED OFFENSE OF SIMPLE  
ASSAULT

If your verdict for Assault Resulting in Serious Bodily Injury (Final Instruction No. 6) or for Assault by Strangulation of a Dating Partner (Final Instruction No. 7) is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on either charge, you should record that decision on the verdict form and go on to consider whether Jesse Sierra is guilty of Simple Assault, a lesser-included offense of Assault Resulting in Serious Bodily Injury and of Assault by Strangulation of a Dating Partner. The crime of Simple Assault has three elements:

**One, on or about between July 13, 2019, and July 21, 2019, inclusive, Jesse Sierra assaulted Esther Wolfe;**

“Assault” was defined for you in Element One of Assault Resulting in Serious Bodily Injury (Final Instruction No. 6).

**Two, the assault happened near Ogalala and elsewhere, in Indian Country, in the District of South Dakota; and**

The same instructions provided to you under Element Three of Assault Resulting in Bodily Injury (Final Instruction No. 6) also apply to this element of Simple Assault.

**Three, Jesse Sierra is an Indian.**

The same instructions provided to you under Element Four of Assault Resulting in Bodily Injury (Final Instruction No. 6) also apply to this element of Simple Assault.

For you to find Jesse Sierra guilty of Simple Assault, a lesser-included offense of Assault Resulting in Serious Bodily Injury and of Assault by Strangulation of a Dating Partner, the prosecution must prove all three elements beyond a reasonable doubt. Otherwise, you must find Jesse Sierra not guilty of this crime.

## FINAL INSTRUCTION NO. 11 – 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.

You have heard evidence that one or more witnesses has been convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give the witness’s testimony.

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. 12 – PRESUMPTION OF INNOCENCE AND  
BURDEN OF PROOF

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

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

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

- This burden never, ever shifts to a defendant to prove his innocence.
- This burden means that a defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if a defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

This burden means that you must find a defendant not guilty of an 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. 13 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or a defendant, keeping in mind that a 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 a defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- 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. 14 – 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 a defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that a 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. 15 – DUTY DURING DELIBERATIONS

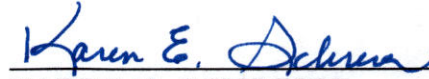
You must follow certain rules while conducting your deliberations and returning your verdict:

- 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 a defendant is guilty or not guilty. If a 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 a defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against a 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 October 28, 2022.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Karen E. Schreier", is written over a horizontal line.

KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE



Defendant Jesse Sierra's Proposed Jury Instruction No. 7:

THEORY OF DEFENSE - CONSENT

It is the Defendant Jesse Sierra's position that between July 13, 2019 and July 21, 2019, he and Esther Wolfe had consensual sexual relations and that he did not use force against her will to engage in sexual acts and that any force used was inherent in the consensual sexual acts. Consent may be verbal or implied based on the facts, circumstances and evidence presented to you. Sex acts, including violent sex acts that are nonetheless consensual between the parties, is not a crime.

10/28/22  
Refused  
K. Schuster

Source: United States v. Fire Thunder, 908 F.2d 272 (8<sup>th</sup> Cir. 1990); United States v. Gabe, 237 F.3d 954 (8<sup>th</sup> Cir. 2001); United States v. Cobenais, 868 F.3d 731, n.4 (8<sup>th</sup> Cir. 2017)(citing United States v. Martin, 528 F.3d 746, 753 (10<sup>th</sup> Cir. 2008)(18 USC 2241(a)(1) could not be applied to "violent sex acts that are nonetheless consensual between the parties.") *See also*, United States v. Norquay, 987 F.2d 475, 478 (8<sup>th</sup> Cir. 1993) *partially abrogated on other grounds*, United States v Thomas, 20 F.3d 817, 823 (8<sup>th</sup> Cir. 1994)(*en banc*).



**Defendant Jesse Sierra's Proposed Instruction No. 4**

**ABSENCE OF WITNESS**

If it is peculiarly within the power of either the government or the defense to produce a witness who could give relevant testimony on an issue in the case, failure to call that witness may give rise to an inference that this testimony would have been unfavorable to that party. No such conclusion should be drawn by you, however, with regard to a witness who is equally available to both parties or whether the testimony of that witness would be merely repetitive or cumulative.

The jury must always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

10/28/22  
Refused  
K. Sierra

**Source:** Kevin F. O'Malley, et al., 1A Fed. Jury Practice and Instruction: Criminal § 14:15 (6<sup>th</sup> ed.); United States v. Williams, 604 F2d 1102, 1117 (8<sup>th</sup> Cir. 1979).

**Defendant Jesse Sierra's Proposed Instruction No. 5A**

**CREDIBILITY OF WITNESSES – DRUG OR ALCOHOL ABUSER**

The testimony of a drug or alcohol abuser must be examined and weighed by the jury with greater care than the testimony of a witness who does not abuse drugs or alcohol.

Esther Wolfe may be considered an abuse of drugs or alcohol.

The jury must determine whether the testimony of the drug or alcohol abuser has been affected by drug or alcohol use or the need for drugs or alcohol.

10/28/22  
Refused  
K. Schran

**Source:** Kevin F. O'Malley, et al., 1A Fed. Jury Practice and Instruction: Criminal § 15:05 (6<sup>th</sup> ed.)



**Defendant Jesse Sierra's Proposed Alternate Instruction No. 5B**

Witnesses who testify that they had or have serious behavioral problems as a direct result of the abuse of drugs are often erratic and unreliable. In determining their credibility you are entitled and you should consider what effect their substance abuse and/or addiction has on what they have said, how they say it. You should give special scrutiny to the testimony of a witness whose observations were made under the influence of drugs.

10/28/22  
Refused  
K. Schreier

**Source:** United States v. Johnson, 848 F2d 904 (8<sup>th</sup> Cir. 1988); United States v. Williams, 809 F2d 75 (5<sup>th</sup> Cir. 1986).

**Defendant Jesse Sierra's Proposed Instruction No. 6**

**FAILURE TO GATHER OR TEST**

During this trial, you have heard testimony of witnesses and may hear argument of counsel that the government did not utilize a specific investigative technique or scientific test. You may consider these facts in deciding whether the government has met its burden of proof. You should consider all of the evidence or lack of evidence in deciding whether the defendant is guilty.

Your responsibility as jurors is to determine whether the government has proven, based upon the evidence, the defendant's guilt beyond a reasonable doubt.

10/28/22  
Refused  
K. Schum

**Source:** Atkins v. State, 421 Md. 434, 441-42; 26 A.3rd 979, 983-83 (2011); 7 Jones on Evidence § 60:44 (7<sup>th</sup> Ed.)