

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. TINA SULLY, Defendants.</p>	<p>4:22-CR-40013 FINAL INSTRUCTIONS TO THE JURY</p>
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Lawrence P. Pison
Judge
September 15, 2023

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 – ASSAULT WITH A DANGEROUS WEAPON

For you to find Tina Sully guilty of the offense of Assault with a Dangerous Weapon, as charged in Counts 1, 2, 4, 5, 6, 7, and 9 of the Second Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, the defendant, Tina Sully, assaulted the alleged victim, identified in the chart below, with the specific intent to cause bodily harm;

“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.

“Bodily harm” means an injury that is painful and obvious or is of a type for which medical attention would ordinarily be sought, including (A) a cut, abrasion, bruise, burn, or disfigurement; (B) physical pain; (C) illness; (D) impairment of the function of a bodily member, organ, or mental faculty; or (E) any other injury to the body, no matter how temporary.

To find specific intent, there must exist in the mind of the perpetrator the specific intent to do bodily harm to the alleged victim. If Tina Sully acted without such specific intent, the crime of Assault with a Dangerous Weapon has not been committed.

Two, Tina Sully used a dangerous weapon as identified in the chart below;

“Dangerous weapon” means an object with the capacity to endanger life or inflict bodily harm and used in a manner likely to do so.

Three, the child was under the age of 18 at the time of the assault;

Four, that Tina Sully is an Indian; and

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

The defendant has not, by entering into this agreement or stipulation, admitted her 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 Tina Sully 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 Tina Sully, and Tina Sully have agreed or stipulated that the alleged assault occurred in Charles Mix County, in Indian Country, in South Dakota.

Tina Sully has not, by entering into this agreement or stipulation, admitted her 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 in Charles Mix County, in Indian Country, in South Dakota.

Count	Approximate Dates	Victim	Dangerous Weapon
1	Between on or about November 26, 2017 and continuing through May 23, 2021	C.S.	Belt
2	Between on or about November 26, 2017 and continuing through May 23, 2021	C.S.	Hanger
4	Between on or about September 23, 2003 and continuing through July 26, 2006	D.A.S. n/k/a D.F.H.	Belt
5	Between on or about July 27, 2006 and continuing through June 28, 2007	D.A.S. n/k/a D.F.H.	Belt
6	Between on or about September 23, 2003 and continuing through July 26, 2006	D.A.S. n/k/a D.F.H.	Hanger
7	Between on or about July 27, 2006 and continuing through June 28, 2007	D.A.S. n/k/a D.F.H.	Hanger
9	Between on or about April 1, 1993 and continuing through March 31, 1998	G.S. III	Belt

For you to find Tina Sully guilty of the offense charged in Counts 1, 2, 4, 5, 6, 7, and 9 of the Second Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt as to each count. If you find that the prosecution has not proved each of the elements, then you must find Tina Sully not guilty of Count 1, 2, 4, 5, 6, 7, or 9 charged in the Second Superseding Indictment.

FINAL INSTRUCTION NO. 3 – CHILD ABUSE

For you to find Tina Sully guilty of Counts 3 and 8 of the Second Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, the defendant, Tina Sully, abused, exposed, tortured, tormented, or cruelly punished the alleged victim as follows;

Count	Approximate Dates	Victim
3	Between on or about November 26, 2017 and continuing through May 23, 2021	C.S.
8	Between on or about July 27, 2006 and continuing through June 28, 2007	D.A.S. n/k/a D.F.H.

The term “abuse” means physical maltreatment;

The term “expose” means to place in a position where the child is open to foreseeable harm;

The term “torture” means to cause intense suffering to or to punish or coerce by inflicting excruciating pain;

The term “torment” means to cause severe and unusually persistent or recurrent distress of body or mind; and

The term “cruelly punish” means to punish in such a way as to intentionally inflict physical suffering with reckless indifference to pain.

Two, Tina Sully committed such act without just cause;

Three, the alleged victim was under the age of 18 at the time;

Four, that Tina Sully is an Indian; and

The parties stipulated that Tina Sully is an Indian. The effect of this stipulation has previously been explained in Final Instruction No. 2.

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

The parties stipulated that the alleged offense took place in Indian Country. The effect of this stipulation has previously been explained in Final Instruction No. 2.

For you to find Tina Sully guilty of the offense charged in Counts 3 and 8 of the Second Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt as to each count. If you find that the prosecution has not proved each of the elements, then you must find Tina Sully not guilty of Counts 3 or 8 charged in the Second Superseding Indictment.

FINAL INSTRUCTION NO. 4 – REASONABLE FORCE

Any person who abuses, exposes, tortures, torments, or cruelly punishes a minor is guilty of a crime.

If you find that the Defendant used reasonable force against the alleged victims for restraint or correction, then you must find the Defendant not guilty of Child Abuse as charged in Counts 3 and 8 of the Second Superseding indictment.

The use of force against a child is not unlawful if committed by a parent, an authorized agent of any parent, or by any guardian, in the exercise of a lawful authority to restrain or correct the child and if restraint or correction has been rendered necessary by the misconduct of the child, or by the child's refusal to obey the lawful command of such parent or an authorized agent or guardian, and the force used is reasonable in manner and moderate in degree.

FINAL INSTRUCTION NO. 5 – ABUSIVE SEXUAL CONTACT OF A CHILD
UNDER TWELVE YEARS

For you to find Tina Sully guilty of the offense of Abusive Sexual Contact of a Child under Twelve Years as charged in Count 10 of the Second Superseding Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that between on or about April 1, 1993 and continuing through March 31, 1998, the defendant, Tina Sully, did engage or attempt to engage in or cause sexual contact with G.S. III;

The term “sexual contact” means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

A person may be found guilty of an attempt if she intended to engage in sexual contact and voluntarily and intentionally carried out some act which was a substantial step toward engaging in sexual contact.

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 Tina Sully did such acts 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. The prosecution is not required to prove that the defendant knew her acts or omissions were unlawful.

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

Four, that Tina Sully is an Indian; and

The parties stipulated that Tina Sully is an Indian. The effect of this stipulation has previously been explained in Final Instruction No. 2.

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

The parties stipulated that the alleged offense took place in Indian Country. The effect of this stipulation has previously been explained in Final Instruction No. 2.

For you to find Tina Sully guilty of the offense charged in Count 10 of the Second Superseding Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. If you find that the prosecution has not proved each of the elements, then you must ^{find} Tina Sully not guilty of Count 10 charged in the Second Superseding Indictment.

FINAL INSTRUCTION NO. 6 – INTENT

Intent may be proved like anything else. You may consider any statements made and acts done by Tina Sully, and all the facts and circumstances in evidence which may aid in a determination of the Tina Sully'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.

FINAL INSTRUCTION NO. 7 – 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. 8 – 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 she 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 her.

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

- This burden never, ever shifts to a defendant to prove her 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 Tina Sully not guilty of an offense charged against her, unless the prosecution proves beyond a reasonable doubt that she has committed each and every element of that offense.

FINAL INSTRUCTION NO. 9 – 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. 10 – 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. 10-A

You have heard that there were previous proceedings in this case. Keep in mind that you must decide this case solely on the evidence presented to you in this trial. The fact that there were previous proceedings must not affect your consideration of this case.

FINAL INSTRUCTION NO. 11 – 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 her 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.

JURY QUESTION

Other than the dates what are the differences between Counts 4 & 5?

Also between Counts 6 & 7?

Signed

Count 4 is a charge of assault with a dangerous weapon regarding DAS n/k/a DFH from September 23, 2003 continuing through July 26, 2006, the weapon alleged to be a belt, while Count 5 also charges assault with a dangerous weapon regarding DAS a/k/a DFH from July 27, 2006 continuing through June 28, 2007, a different time period, with the weapon again alleged to be a belt.

Count 6 again alleges assault with a dangerous weapon regarding DAS, n/k/a DFH between September 23, 2003 and July 26, 2006, the same time period in Count 4, but the weapon alleged this time is a hanger.

Count 7 again alleges assault with a dangerous weapon regarding DAS a/k/a DFH from July 27, 2006 continuing through June 28, 2007, the same time period as in Count 5, but the weapon alleged this time is a hanger.