

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 CHILD
UNDER TWELVE YEARS

For you to find Wendell Archambeau, Sr., guilty of the offense of Aggravated Sexual Abuse of a Child under Twelve Years as charged in Count 2 of the Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that between on or about June 1, 2016, and September 30, 2016, Archambeau, Sr., did engage or attempt to engage in a sexual act with B.S.C.;

The term “sexual act” is defined as

- A) Contact between the penis and the vulva or the penis and the anus, and contact involving the penis occurs upon penetration, however slight;
- B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- C) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- D) 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, degrade, or arouse or gratify the sexual desire of any person.

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 Archambeau, Sr. 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 his acts or omissions were unlawful.

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

Four, that Archambeau, Sr. is an Indian;

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that Archambeau, Sr., 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 Archambeau, Sr., is an Indian.

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

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the alleged offense took place in Indian Country.

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 the alleged offense took place in Indian Country.

For you to find Archambeau, Sr., guilty of the offense charged in Count 2 of the Indictment, the prosecution must prove all five of the essential elements beyond a reasonable doubt. Otherwise, you must find Archambeau, Sr., not guilty of the offense charged in Count 2 of the Indictment.

FINAL INSTRUCTION NO. 3 – ABUSIVE SEXUAL CONTACT OF A CHILD
UNDER TWELVE YEARS

For you to find Wendell Archambeau, Sr., guilty of the offense of Abusive Sexual Contact of a Child under Twelve Years as charged in Count 4 of the Indictment, the prosecution must prove the following five essential elements beyond a reasonable doubt:

One, that between on or about June 11, 2018, Archambeau, Sr. did engage or attempt to engage in sexual contact with B.A.;

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.

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

Two, that Archambeau, Sr. did such acts knowingly;

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

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

Four, that Archambeau, Sr. is an Indian;

The parties stipulated that the defendant 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 Archambeau, Sr. guilty of the offense charged in Count 4 of the Indictment, the prosecution must prove all five of the essential elements

beyond a reasonable doubt. Otherwise, you must find Archambeau, Sr. not guilty of the offense charged in Count 4 of the Indictment.

FINAL INSTRUCTION NO. 4 – PROOF OF INTENT

Intent may be proven like anything else. You may consider any statements made or 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.

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 – DEFENDANT’S PRIOR SIMILAR ACTS

You have heard evidence that the defendant may have previously committed other offenses of child molestation. The defendant is not charged with these other offenses. You may consider this evidence only if you unanimously find it more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable. This is a lower standard than proof beyond a reasonable doubt.

If you find that these offenses have not been proved, you must disregard them. If you find that these offenses have been proved, you may consider them to help you decide any matter to which they are relevant. You should give them the weight and value you believe they are entitled to receive. You may consider the evidence of such other acts of child molestation for its tendency, if any, to show the defendant’s propensity to engage in child molestation as well as its tendency, if any, to determine whether the defendant committed the acts charged in the Indictment or to determine the defendant’s intent, motive, plan, design, or opportunity to commit the acts charged in the Indictment.

Remember, the defendant is on trial only for the crimes charged. You may not convict a person simply because you believe he may have committed similar acts in the past.

FINAL INSTRUCTION NO. 7 – 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 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 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 the offenses charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of the offenses.

FINAL INSTRUCTION NO. 8 – 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 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 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. 9 – 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. 10 – DUTY DURING DELIBERATIONS

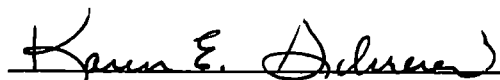
You must follow certain rules while conducting your deliberations and returning your verdict:

- 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 20, 2019.

BY THE COURT:



KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE