

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

<p>UNITED STATES OF AMERICA,  Plaintiff,  vs.  RONNIE WHITE MOUNTAIN,  Defendant.</p>	<p>CR 19-10030-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 an oral instruction during the trial and you must follow that instruction. 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 and aggravated incest. 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. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

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

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.

Finally, you were instructed that some evidence was received for a limited purpose only and you must follow those instructions.

INSTRUCTION NO. 5

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. 6

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.

INSTRUCTION NO. 7

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. 8

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. 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

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 January 1, 2010, and December 31, 2012, the defendant voluntarily and intentionally caused [REDACTED] to engage in a sexual act as defined in Instruction No. 11.
2. At the time of the alleged offense, [REDACTED] 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 as 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. 11

The term sexual act as used in Instruction No. 10 means:

1. 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, or degrade, or to arouse or gratify the sexual desire of any person; or

2. 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 any person.

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 1.

INSTRUCTION NO. 12

If you should unanimously find the defendant "Not Guilty" of the crime of aggravated sexual abuse of a child as charged in Count I of the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count I of the indictment, then you must proceed to determine the guilt or innocence of the defendant as to abusive sexual contact under this instruction.

The crime of abusive sexual contact, a lesser included offense of 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 January 1, 2010, and December 31, 2012, the defendant did voluntarily and intentionally engage in sexual contact with [REDACTED], that is, intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of [REDACTED], with an intent to abuse, humiliate, harass or degrade [REDACTED], or to arouse or gratify the sexual desire of Ronnie White Mountain.
2. At the time of the alleged offense, [REDACTED] had not attained the age of 12 years.
3. The defendant is an Indian; and
4. The offense occurred in Indian country.

For you to find the defendant guilty of this crime, a lesser included offense of the crime of aggravated sexual abuse of a child as charged in Count I of the indictment, the government must prove all of the essential elements of this lesser included offense beyond a reasonable doubt. Otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 13

If you should unanimously find the defendant 'Not Guilty' of the crime of abusive sexual contact of a child, a lesser included offense of the crime of aggravated sexual abuse of a child, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime of abusive sexual contact of a child, then you must proceed to determine the guilt or innocence of the defendant as to simple assault under this instruction.

The crime of simple assault, a lesser included offense of the crime of abusive sexual contact of a child, has three essential elements, which are:

1. On or about between January 1, 2010, and December 31, 2012, the defendant voluntarily and intentionally assaulted [REDACTED].
2. The defendant is an Indian; and
3. The alleged offense occurred in Indian country.

For you to find the defendant guilty of this crime, a lesser included offense of the crime of abusive sexual contact of a child, the government must prove all of the essential elements of this lesser included offense beyond a reasonable doubt. Otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 14

The term "assault" as used in Instruction No. 13 means any intentional and voluntary attempt or threat to do injury to the person of another, when coupled with the apparent present ability to do so sufficient to put the person against whom the attempt is made in fear of immediate bodily harm.

INSTRUCTION NO. 15

The crime of aggravated incest, as charged in Count III of the indictment, has five essential elements, which are:

1. On or about between the 1st day of January, 2010, and the 31st day of December, 2012, at McLaughlin, in Corson County, in Indian country, in the District of South Dakota, Ronnie White Mountain, an Indian, did knowingly engage in an act of sexual penetration with [REDACTED].
2. At the time of the alleged offense, [REDACTED] had not attained the age of 18 years.
3. That [REDACTED] was the biological child of Ronnie White Mountain.
4. That Ronnie White Mountain is an Indian; and
5. That the offense occurred in Indian country.

For you to find the defendant guilty of this crime as 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. 16

The term "sexual penetration" as used in Instruction No. 15 means any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body.

INSTRUCTION NO. 17

You have heard evidence that the defendant allegedly engaged in sexual contact or attempted sexual contacts with Ryanne Bisgard and Alexis Benson in Minnesota. Defendant disputes these allegations. You may consider this evidence only if you unanimously find it is 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 this evidence has been proved, then you may consider it to help you decide defendant's motive, opportunity, intent, propensity, plan, knowledge, or absence of mistake or accident concerning the offenses charged in the indictment. You should give it the weight and value you believe it is entitled to receive. If you find that this evidence has not been proved, you must disregard it.

Remember, even if you find that the defendant may have committed similar acts in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of prior acts only on the issues stated above.

INSTRUCTION NO. 18

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. 19

One of the issues in this case is whether the defendant was intoxicated at the time the alleged crimes of aggravated sexual abuse of a child and abusive sexual contact of a child were committed.

Being under the influence of alcohol provides a legal excuse for the commission of the crimes of aggravated sexual abuse of a child and abusive sexual contact of a child only if the effect of the alcohol made it impossible for the defendant to have the specific intent to abuse, humiliate, harass, or degrade [REDACTED], or to arouse or gratify the sexual desire of Ronnie White Mountain.

Evidence that the defendant acted while under the influence of alcohol may be considered by you, together with all the other evidence, in determining whether or not the defendant did in fact have the specific intent to commit the crimes of aggravated sexual abuse of a child or abusive sexual contact of a child.

Voluntary intoxication is not a defense to the lesser included offense of simple assault.

Voluntary intoxication is not a defense to the crime of incest.

INSTRUCTION NO. 20

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

INSTRUCTION NO. 21

The government must prove beyond a reasonable doubt that defendant Ronnie White Mountain is an Indian. There are two elements for you to determine in deciding whether the defendant is an Indian under federal criminal jurisdiction.

The first element is whether the defendant has some Indian blood. If and only if you find beyond a reasonable doubt that Ronnie White Mountain has Indian blood in him, may you then go on to consider the second element.

The second element is whether Ronnie White Mountain is recognized as an Indian by the tribe or by the federal government or both. Among the factors that you may consider are:

1. enrollment in a tribe;
2. government recognition formally or informally through providing the defendant assistance reserved only to Indians;
3. tribal recognition formally or informally through subjecting the defendant to tribal court jurisdiction;
4. enjoying benefits of tribal affiliation; and
5. social recognition as an Indian through living on a reservation and participating in Indian social life, including whether the defendant holds himself out as an Indian.

It is not necessary that all of these factors be present. Rather, the jury is to consider all of the evidence in determining whether the government has proved beyond a reasonable doubt that the defendant is an Indian.

INSTRUCTION NO. 22

The term "Indian country," as used in these Instructions, means the following:

1. All land within the limits of any Indian reservation under the jurisdiction of the United States Government;
2. All dependent Indian communities; and
3. All Indian allotments, the Indian titles to which have not been extinguished.

INSTRUCTION NO. 23

The crime charged in Count I and the lesser included offenses include attempts to commit the crime in question. 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 alleged activity.





INSTRUCTION NO. 24

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. 25

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. 26

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. 27

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 verdicts.

INSTRUCTION NO. 28

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.  RONNIE WHITE MOUNTAIN,  Defendant.</p>	<p>CR 19-10030-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 Ronnie White Mountain:

\_\_\_\_\_ NOT GUILTY      \_\_\_\_\_ GUILTY

If, and only if, you found Ronnie White Mountain NOT GUILTY of the crime charged in Count I of the indictment, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime charged in Count I of the indictment, then you must deliberate on the lesser included offense of abusive sexual contact of a child and complete the following:

We, the jury in the above entitled action, as to the crime of abusive sexual contact of a child, a lesser included offense of the crime charged in Count I of the indictment, find Ronnie White Mountain:

\_\_\_\_\_ NOT GUILTY      \_\_\_\_\_ GUILTY

If, and only if, you found Ronnie White Mountain NOT GUILTY of the crime of abusive sexual contact, or if, after all reasonable efforts, you are unable to reach a verdict as to the crime of abusive sexual contact, then you must deliberate on the lesser included offense of simple assault and complete the following:

We, the jury in the above entitled action, as to the crime of simple assault, a lesser included offense of the crime of abusive sexual contact, find Ronnie White Mountain:

\_\_\_\_\_ NOT GUILTY      \_\_\_\_\_ GUILTY

**COUNT III**

We, the jury in the above entitled action, as to the crime of aggravated incest as charged in Count III of the indictment, find Ronnie White Mountain:

\_\_\_\_\_ NOT GUILTY      \_\_\_\_\_ GUILTY

Dated this \_\_\_\_\_ day of September, 2019.

\_\_\_\_\_  
Foreperson