

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**  
MAR 14 2012  
*[Signature]*  
CLERK

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.

No. CR 11-40039-01-KES

**FINAL  
INSTRUCTIONS  
TO THE JURY**

CAMERON SCHWARTZLE,  
  
Defendant.

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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 – ACCESSING CHILD PORNOGRAPHY

For you to find Cameron Schwartzle guilty of Count 1 of the superseding indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

**One, that on or about between January 3, 2011, and January 13, 2011, the defendant knowingly accessed with intent to view computer files that contained visual depictions of child pornography;**

“Knowledge” is an element of the offense charged in this case and must be proved beyond a reasonable doubt. The prosecution is not required to prove that the defendant knew that his acts or omissions were unlawful. 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.

To “access” child pornography means to intentionally view it.

The phrase “child pornography” means any visual depiction of a minor engaging in sexually explicit conduct, where the minor was engaged in the sexually explicit conduct during production of the depiction. The term “visual depiction” includes a photograph, film, video, picture, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means. It includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image.

**Two, that the defendant knew that the visual depictions were of a minor engaging in sexually explicit conduct; and**

The term “minor” means any person under the age of eighteen years.

The term “sexually explicit conduct” means actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; bestiality, masturbation, sadistic or masochistic abuse, or lascivious exhibition of the genitals or pubic area of any person.

Whether a visual depiction of the genitals or pubic area constitutes a lascivious exhibition requires a consideration of the overall content of the material. You may consider such factors as (1) whether the focal point of the picture is on the minor’s genitals or pubic area; (2) whether the setting of the picture is sexually suggestive, that is, in a place or pose generally associated with sexual activity; (3) whether the minor is depicted in an unnatural pose or in inappropriate attire, considering the age of the minor; (4) whether the minor is fully or partially clothed, or nude; (5) whether the picture suggests sexual coyness or a willingness to engage in sexual activity; (6) whether the picture is intended or designed to elicit a sexual response in the viewer; (7) whether the picture portrays the minor as a sexual object; and (8) the caption on the picture. It is for you to decide the weight or lack of weight to be given to any of these factors. A picture need not involve all of these factors to constitute a lascivious exhibition of the genitals or pubic area.

**Three, that the visual depictions had been mailed, shipped, or transported, including by computer, in interstate of foreign commerce.**

The term “commerce” includes, among other things, travel, trade, transportation, and communication. The phrase “interstate commerce” means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia. The phrase “foreign commerce” means commerce between any state, territory or possession of the United States and a foreign country.

Images transmitted or received over the Internet have moved in interstate or foreign commerce. It is for you to determine, however, if the visual depiction had been transmitted or received over the Internet.

In Count 1 of the superseding indictment, the defendant is also charged with attempting to access child pornography. A person may be found guilty of an attempt if he intended to access with intent to view child pornography and voluntarily, knowingly, and intentionally carried out some act that was a substantial step toward that offense.

A “substantial step” must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer, viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute.

You have heard evidence of more than one visual depiction involved in the offense. You must agree unanimously as to which visual depiction or depictions the defendant accessed or attempted to access with intent to view.

For you to find Cameron Schwartzle guilty of accessing or attempting to access child pornography, as charged in the superseding indictment, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the charge.

FINAL INSTRUCTION NO. 3 – DISTRIBUTION AND RECEIPT OF CHILD  
PORNOGRAPHY

For you to find Cameron Schwartzle guilty of Count 2 of the superseding indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

**One, that on or about January 7, 2011, the defendant knowingly received or distributed computer files that contained visual depictions of child pornography;**

The terms “knowledge,” “child pornography,” and “visual depiction” were defined for you in Final Instruction No. 2. You should apply those definitions here.

To “receive” something means to come into possession of it or to acquire it. The prosecution is not required to prove that the defendant bought or paid for the child pornography or exchanged anything of value for it.

To “distribute” something means to deliver or transfer possession of it to someone else.

**Two, that the defendant knew that the visual depictions were of a minor engaging in sexually explicit conduct; and**

The terms “minor” and “sexually explicit conduct” were defined for you in Final Jury Instruction No. 2. You should apply those definitions here.

**Three, that the visual depictions had been mailed, shipped, or transported, including by computer, in interstate or foreign commerce.**

The terms “commerce,” “interstate commerce,” and “foreign commerce” were defined for you in Final Jury Instruction No. 2. You should apply those definitions here.

In Count 2 of the superseding indictment, the defendant is also charged with attempting to receive and distribute child pornography. A person may be found guilty of an attempt if he intended to receive or distribute child pornography and voluntarily, knowingly, and intentionally carried out some act that was a substantial step toward that offense.

The term “substantial step” was defined for you in Final Jury Instruction No. 2. You should apply that definition here.

You have heard evidence of more than one visual depiction involved in the offense. You must agree unanimously as to which visual depiction or depictions the defendant received or distributed or attempted to receive or distribute.

For you to find Cameron Schwartze guilty of receiving or distributing child pornography or attempting to receive or distribute child pornography, as charged in the superseding indictment, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the charge.

FINAL INSTRUCTION NO. 4 – POSSESSION OF CHILD PORNOGRAPHY

For you to find Cameron Schwartze guilty of Count 3 of the superseding indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

**One, that between on or about December 23, 2010 and January 14, 2011, the defendant knowingly possessed computer files that contained visual depictions of child pornography;**

The terms “knowledge,” “child pornography,” and “visual depiction” were defined for you in Final Instruction No. 2. You should apply those definitions here.

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it. A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint. Whenever the word “possession” has been used in these instructions it includes actual as well as constructive possession and also sole as well as joint possession.

**Two, that the defendant knew that the visual depictions were of a minor engaging in sexually explicit conduct; and**

The terms “minor” and “sexually explicit conduct” were defined for you in Final Jury Instruction No. 2. You should apply those definitions here.



**Three, that the visual depictions had been mailed, shipped, or transported, including by computer, in interstate or foreign commerce.**

The terms “commerce,” “interstate commerce,” and “foreign commerce” were defined for you in Final Jury Instruction No. 2. You should apply those definitions here.

In Count 3 of the superseding indictment, the defendant is also charged with attempting to possess child pornography. A person may be found guilty of an attempt if he intended to possess child pornography and voluntarily, knowingly, and intentionally carried out some act that was a substantial step toward that offense.

The term “substantial step” was defined for you in Final Jury Instruction No. 2. You should apply that definition here.

You have heard evidence of more than one visual depiction involved in the offense. You must agree unanimously as to which visual depiction or depictions the defendant knowingly possessed or attempted to possess.

For you to find Cameron Schwartze guilty of possession of child pornography or attempted possession of child pornography, as charged in the superseding indictment, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the charge.

FINAL INSTRUCTION NO. 5 – CONSIDER EACH COUNT SEPARATELY

Count 3 of the superseding indictment charges Cameron Schwartzle with possessing child pornography during a 23 day period from December 23, 2010, through January 14, 2011.

Count 1 of the superseding indictment charges Cameron Schwartzle with accessing child pornography during an eleven-day period from January 3, 2011, through January 13, 2011.

Count 2 of the superseding indictment charges Cameron Schwartzle with receiving or distributing child pornography on or about a single day: January 7, 2011.

You are instructed that you may not convict Cameron Schwartzle on more than one count as to the same visual depiction. That is why I instructed you that you must agree unanimously as to which visual depictions, if any, the defendant accessed; which visual depictions, if any, the defendant possessed; and which visual depictions, if any, the defendant received or distributed.

The defendant may be convicted on any one of the three counts as to any visual depiction he accessed, possessed, or received/distributed on or about January 7, 2011, but he may not be convicted on more than one count as to any visual depiction from that day.

The defendant may be convicted on either Count 1 or Count 3 as to any visual depiction he accessed or possessed from January 3, 2011, through January 13, 2011, but he may not be convicted of both Count 1 and Count 3 as to the same visual depiction dating from that period.

Once again, Cameron Schwartzle may not be convicted on any count as to any date unless you agree unanimously that the government has proved each element of the offense charged in that count, beyond a reasonable doubt, as to a given visual depiction.

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

Cameron Schwartzle is presumed innocent, and therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find the defendant not guilty. The presumption of innocence may be overcome only if the prosecution proves, beyond a reasonable doubt, each element of a crime charged against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. Therefore, the fact that the defendant did not testify must not be discussed or considered by you in any way when deliberating and arriving at your verdict. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution.

Unless the prosecution proves beyond a reasonable doubt that Cameron Schwartzle committed each and every element of the offenses charged in the superseding indictment against him, you must find him not guilty of that offense.

## FINAL INSTRUCTION NO. 7 – REASONABLE DOUBT

A reasonable doubt may arise from the evidence or lack of evidence produced by the prosecution. 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 in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

## FINAL INSTRUCTION NO. 8 – DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. Your verdict as to the defendant must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on the offense charged against him, then the defendant should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on the offense charged, then your vote should be for a verdict of guilty against the defendant on that charge, and if all of you reach that conclusion, then the verdict of the jury must be guilty for the defendant. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged.

Remember also that the question before you can never be whether the government wins or loses the case. The government, as well as society, always

wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

FINAL INSTRUCTION NO. 9 – DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

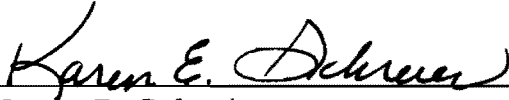
*Second*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. **Remember that you should not tell anyone—including me—how your votes stand numerically.**

*Fourth*, your verdict must be based solely on the evidence and on the law in these instructions. **The verdict, whether not guilty or guilty, must be unanimous.** Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

*Finally*, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Dated March 14, 2012.

  
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Karen E. Schreier  
Chief Judge