


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
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CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHAVEZ SPOTTED HORSE,

Defendant.

CR 17-10013-CBK

JURY INSTRUCTIONS

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. 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 receipt of images depicting the sexual exploitation of minors and possession of child pornography. 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 verdict.

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

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. 5

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.

INSTRUCTION NO. 6

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. 7

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. 8

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.

INSTRUCTION NO. 9

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. 10

You have heard testimony that defendant allegedly made statements to others. It is for you to decide:

First, whether defendant made the statements in question and

Second, if so, how much weight you should give to it.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NO. 11

The crime of receipt of images depicting the sexual exploitation of minors as charged in Count 1 of the indictment has three essential elements, which are:

1. On or about between January 1, 2013, and November 3, 2015, the defendant knowingly received one or more computer files that contained a visual depiction or depictions of child pornography.
2. The defendant knew that the visual depiction or depictions were of a minor engaging in sexually explicit conduct (as defined in Instruction No. 13); and
3. The computer file or files containing the visual depiction or depictions had been transported by computer in interstate or foreign commerce.

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 (exhibits), if any, the defendant knowingly received.

You must also agree unanimously as to which visual depiction or depictions (exhibits), if any, show a child under the age of 18 when the photo was taken.

For you to find the defendant guilty of this crime charged in Count 1 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. 12

The crime of possession of child pornography, as charged in Count 2 of the indictment, has three essential elements, which are:

1. On or about between January 1, 2013, and November 3, 2015, the defendant knowingly possessed one or more computer files that contained a visual depiction or depictions of child pornography.
2. The defendant knew that the visual depiction or depictions were of a minor engaging in sexually explicit conduct (as defined in Instruction No. 13); and
3. The computer file or files containing the visual depiction or depictions had been transported by computer in interstate or foreign commerce.

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 (exhibits), if any, the defendant knowingly possessed.

You must also agree unanimously as to which visual depictions or depictions (exhibits), if any, show a child under the age of 18 when the photo was taken.

For you to find the defendant guilty of this crime charged in Count 2 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. 13

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

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 any photograph or picture, whether made or produced by electronic, mechanical, or other means. It includes data stored on computer disk or by electronic means which is capable of conversion into a visual image.

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; masturbation; or lascivious exhibition of the genitals or pubic area of any person.

INSTRUCTION NO. 14

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(s) on the picture(s).

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.

INSTRUCTION NO. 15

The term “child erotica” means images or videos of minors which do not depict sexually explicit conduct. Child erotica is material that depicts children as sexual objects or in a sexually suggestive way, but is not sufficiently lascivious to meet the legal definition of sexually explicit conduct. Such images or videos are not child pornography.

INSTRUCTION NO. 16

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.

The term “commerce” includes, among other things, travel, trade, transportation and communication.

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

INSTRUCTION NO. 17

The term “computer” as used in these instructions means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.

INSTRUCTION NO. 18

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.

Possession in a possession of child pornography case requires that the defendant knowingly possessed child pornography.

INSTRUCTION NO. 19

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. 20

The crimes charged in the indictment include an attempt 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. 21

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. 22

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. 23

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. 24

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. 25

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

UNITED STATES OF AMERICA, Plaintiff, vs. CHAVEZ SPOTTED HORSE, Defendant.	CR 17-10013-CBK VERDICT
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Please return a verdict by placing an "X" in the space provided.

We, the jury in the above entitled action, as to the crime of receipt of images depicting the sexual exploitation of minors as charged in Count 1 of the indictment, find Chavez Spotted Horse:

_____ NOT GUILTY _____ GUILTY

If you found Chavez Spotted Horse GUILTY of the crime charged in Count 1 of the indictment, state which one or more of the images listed below you unanimously find were child pornography received by the defendant.

- | | |
|-----------------|------------------|
| _____ Exhibit 1 | _____ Exhibit 8 |
| _____ Exhibit 2 | _____ Exhibit 9 |
| _____ Exhibit 3 | _____ Exhibit 10 |
| _____ Exhibit 4 | _____ Exhibit 11 |
| _____ Exhibit 5 | _____ Exhibit 12 |
| _____ Exhibit 6 | _____ Exhibit 13 |
| _____ Exhibit 7 | _____ Exhibit 14 |

We, the jury in the above entitled action, as to the crime of possession of child pornography, as charged in Count 2 of the indictment, find Chavez Spotted Horse:

_____ NOT GUILTY _____ GUILTY

If you found Chavez Spotted Horse GUILTY of the crime charged in Count 2 of the indictment, state which one or more of the images listed below you unanimously find were child pornography possessed by the defendant.

_____ Exhibit 1	_____ Exhibit 8
_____ Exhibit 2	_____ Exhibit 9
_____ Exhibit 3	_____ Exhibit 10
_____ Exhibit 4	_____ Exhibit 11
_____ Exhibit 5	_____ Exhibit 12
_____ Exhibit 6	_____ Exhibit 13
_____ Exhibit 7	_____ Exhibit 14

Dated this _____ day of November, 2017.

Foreperson