

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MAKSIM STEFANYUK,

Defendant.

No. CR 17-40042-01-KES

**FINAL
INSTRUCTIONS
TO THE JURY**

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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 - 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 you think it deserves.

FINAL INSTRUCTION NO. 3 – RECEIPT, POSSESSION, OR DISTRIBUTION OF MATERIAL CONTAINING CHILD PORNOGRAPHY

For you to find Maksim Stefanyuk guilty of the offense charged in **Count One in the Indictment**, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, that on or about January 13, 2017, Stefanyuk knowingly received or distributed computer files that contained visual depictions of child pornography;

The government is not required to prove that Stefanyuk knew that his acts 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.

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, video, picture, or computer or computer-generated image 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 visual image.

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

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

Three, that the visual depictions were mailed, shipped, or transported, including 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 the defendant received or distributed. You are instructed that the government is only required to prove that Stefanyuk received or distributed a single image.

You have also heard evidence of receipt or distribution of child pornography. You must agree unanimously as to whether Stefanyuk received computer files that contained visual depictions of child pornography, distributed computer files that contained visual depictions of child pornography, or both.

If the government has proved all three of these elements beyond a reasonable doubt, then you must find Stefanyuk guilty of the crime charged in the Indictment.

Lesser Included Offense – Possession of Child Pornography

If your verdict under these instructions is not guilty of knowingly receiving or distributing child pornography, or if, after all reasonable efforts, you are unable to reach a verdict on this instruction, you should record that decision on the verdict form and go on to consider whether Stefanyuk is guilty

of the crime of possession of child pornography. The crime of possession of child pornography, a lesser included offense of the crime charged in the Indictment, has the following three essential elements:

One, that on or about January 13, 2017, Stefanyuk knowingly possessed computer files that contained visual depictions of child pornography;

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

Three, that the visual depictions had been mailed, shipped, or transported, including 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 the defendant possessed. You are instructed that the government is only required to prove that Stefanyuk possessed a single image.

You have also heard evidence of possession of child pornography. You must agree unanimously as to whether Stefanyuk possessed computer files that contained visual depictions of child pornography.

If the government has proved all three of these elements beyond a reasonable doubt, then you must find Stefanyuk guilty of the lesser included offense.

FINAL INSTRUCTION NO. 4 – RECEIPT, POSSESSION, OR
DISTRIBUTION OF MATERIAL CONTAINING CHILD PORNOGRAPHY

For you to find Maksim Stefanyuk guilty of the offense charged in **Count Two in the Indictment**, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, that on or about February 3, 2017, to on or about February 4, 2017, Stefanyuk knowingly received or distributed computer files that contained visual depictions of child pornography;

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

Three, that the visual depictions were mailed, shipped, or transported, including 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 the defendant received or distributed. You are instructed that the government is only required to prove that Stefanyuk received or distributed a single image.

You have also heard evidence of receipt or distribution of child pornography. You must agree unanimously as to whether Stefanyuk received computer files that contained visual depictions of child pornography, distributed computer files that contained visual depictions of child pornography, or both.

If the government has proved all three of these elements beyond a reasonable doubt, then you must find Stefanyuk guilty of the crime charged in the Indictment.

Lesser Included Offense – Possession of Child Pornography

If your verdict under these instructions is not guilty of knowingly receiving or distributing child pornography, or if, after all reasonable efforts, you are unable to reach a verdict on this instruction, you should record that decision on the verdict form and go on to consider whether Stefanyuk is guilty of the crime of possession of child pornography. The crime of possession of child pornography, a lesser included offense of the crime charged in the Indictment, has the following three essential elements:

One, that on or about February 3, 2017, to on or about February 4, 2017, Stefanyuk knowingly possessed computer files that contained visual depictions of child pornography;

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

Three, that the visual depictions had been mailed, shipped, or transported, including 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 the defendant possessed. You are instructed that the government is only required to prove that Stefanyuk possessed a single image.

You have also heard evidence of possession of child pornography. You must agree unanimously as to whether Stefanyuk possessed computer files that contained visual depictions of child pornography.

If the government has proved all three of these elements beyond a reasonable doubt, then you must find Stefanyuk guilty of the lesser included offense.

FINAL INSTRUCTION NO. 5 – RECEIPT OR POSSESSION OF MATERIAL
CONTAINING CHILD PORNOGRAPHY

For you to find Maksim Stefanyuk guilty of the offense charged in **Count Three in the Indictment**, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, that on or about January 30, 2017, to on or about February 22, 2017, Stefanyuk knowingly received computer files that contained visual depictions of child pornography;

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

Three, that the visual depictions were mailed, shipped, or transported, including 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 the defendant received. You are instructed that the government is only required to prove that Stefanyuk received a single image.

You have also heard evidence of receipt of child pornography. You must agree unanimously as to whether Stefanyuk received computer files that contained visual depictions of child pornography.

If the government has proved all three of these elements beyond a reasonable doubt, then you must find Stefanyuk guilty of the crime charged in the Indictment.

Lesser Included Offense – Possession of Child Pornography

If your verdict under these instructions is not guilty of knowingly receiving child pornography, or if, after all reasonable efforts, you are unable to reach a verdict on this instruction, you should record that decision on the verdict form and go on to consider whether Stefanyuk is guilty of the crime of possession of child pornography. The crime of possession of child pornography, a lesser included offense of the crime charged in the Indictment, has the following three essential elements:

One, that on or about January 30, 2017, to on or about February 22, 2017, Stefanyuk knowingly possessed computer files that contained visual depictions of child pornography;

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

Three, that the visual depictions had been mailed, shipped, or transported, including 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 the defendant possessed. You are instructed that the government is only required to prove that Stefanyuk possessed a single image.

You have also heard evidence of possession of child pornography. You must agree unanimously as to whether Stefanyuk possessed computer files that contained visual depictions of child pornography.

If the government has proved all three of these elements beyond a reasonable doubt, then you must find Stefanyuk guilty of the lesser included offense.

FINAL INSTRUCTION NO. 6 – FAILURE TO REGISTER UNDER SEX
OFFENDER REGISTRATION AND NOTIFICATION ACT

For you to find Maksim Stefanyuk guilty of Count Four in the
Indictment, the prosecution must prove the following three essential elements
beyond a reasonable doubt:

**One, that Stefanyuk is required to register under the Sex Offender
Registration and Notification Act;**

A person convicted of possession of child pornography in federal
court is required to register under the Sex Offender Registration
and Notification Act.

**Two, that Stefanyuk is a sex offender by reason of a conviction
under federal law; and**

A person convicted of possession of child pornography in federal
court is considered to have been convicted of a sex offense.

**Three, that between April 4, 2016, and February 22, 2017,
Stefanyuk knowingly failed to register or update a registration as
required under the Sex Offender Registration and Notification Act.**

The Sex Offender Registration and Notification Act provides that a
sex offender is required to register in the jurisdiction where the
defendant resides or where he is employed within three business
days after changing his residence or employment and inform the
jurisdiction where the defendant resides or where he is an
employee of all the information required for the defendant in the
sex offender registry.

The term “resides” means, with respect to defendant, the location
of defendant’s home or other place where the defendant habitually
lives.

If the government has proved all three of these elements beyond a reasonable doubt, then you must find Stefanyuk guilty of the crime charged in Count Four of the Indictment.

FINAL INSTRUCTION NO. 7 – PRIOR SIMILAR ACTS

You have heard evidence that the defendant may have previously committed possession of child pornography in 2011. The defendant is not charged here with this other offense. 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 that this offense has not been proved, you must disregard it. If you find that this offense has been proved, you may consider it to help you decide any matter to which it is relevant with respect to Counts One through Three. With regard to Count Four, you may consider this evidence only for the purpose of determining whether Stefanyuk is required to register under the Sex Offender Registration and Notification Act and whether he is a sex offender by reason of a conviction under federal law, but not for any other purpose.

FINAL INSTRUCTION NO. 8 – 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 charge, 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 the 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 offense charged against him, unless the prosecution proves beyond a reasonable doubt that he 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 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. 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 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.

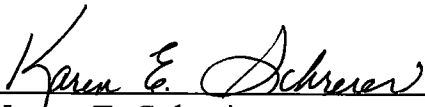
FINAL INSTRUCTION NO. 11 – DUTY DURING DELIBERATIONS

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 the defendant is not guilty or guilty. If the defendant is guilty, I will decide what his 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 July 19, 2018.



Karen E. Schreier
United States District Judge