

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>JAYDEN DEBEVEC,</p> <p>Defendant.</p>	<p>4:23-CR-40033-ECS</p> <p>FINAL INSTRUCTIONS TO THE JURY</p>
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VERDICT FORM

FINAL INSTRUCTION NO. 1

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

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

FINAL INSTRUCTION NO. 3

I have mentioned the word “evidence.” The “evidence” in this case consists of the testimony of witnesses, the documents and other things received as exhibits, and the facts that have been stipulated—that is, formally agreed to by the parties.

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 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 that I struck from the record, or told you to disregard, is not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

When you were instructed that evidence was received for a limited purpose, you must follow that instruction.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

FINAL INSTRUCTION NO. 4

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 of any witness 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.

FINAL INSTRUCTION NO. 5

The Indictment in this case charges the defendant, Jayden Debevec, with one count of attempted enticement of minor using the internet. The defendant has pleaded not guilty to this charge.

The Indictment is simply the document that formally charges the defendant with the crime for which he is on trial. The Indictment is not evidence of anything. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate, with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty. This presumption can be overcome only if the United States proved during the trial, beyond a reasonable doubt, each element of the crime charged.

Please remember that only the defendant, not anyone else, is on trial here, and that the defendant is on trial only for the crime charged, not for anything else.

There is no burden upon the defendant to prove that he is innocent. Instead, the burden of proof remains on the United States throughout the trial.

FINAL INSTRUCTION NO. 6

For you to find Jayden Debevec guilty of the offense charged in Count 1 of the Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, that on or about March 4, 2023, and March 5, 2023, Debevec knowingly used a facility or means of interstate commerce, that is, a cell phone or the internet, to attempt to persuade, induce, entice, or coerce an individual, who was an undercover law enforcement officer posing as a 15-year-old female, to engage in sexual activity;

The term “interstate commerce” means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia.

The term “commerce” includes, among other things, travel, trade, transportation, and communication. The Internet is an instrumentality and channel of interstate commerce.

It is not necessary that the government prove that Debevec interacted with an actual individual who was less than 18 years of age, but the government must prove that Debevec believed the individual to be under that age.

It is not necessary for the government to prove the individual was actually persuaded, induced, enticed, or coerced, but it is necessary for the government to prove that the defendant intended to persuade induce, entice, or coerce the individual to engage in unlawful sexual activity under South Dakota law and knowingly and willfully took a substantial step toward intending to persuade, induce, entice, or coerce the individual to engage in such unlawful sexual activity.

A person may be found guilty of an attempt if he intended to entice a minor using the internet and voluntarily and intentionally carried out some act which was a substantial step toward that end.

A “substantial step,” as used in this instruction, 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 violation the statute.

Two, that Debevec believed that such individual was less than 18 years of age;

The defendant need not know the age of the intended victim, so long as he believed that the victim was under the age of 18.

It is not necessary that there was an actual minor victim. The “victim” may, in fact, be an undercover police officer.

Three, that if the sexual activity had occurred, Debevec could have been charged with a criminal offense under South Dakota law;

Under South Dakota law, a person commits a criminal offense when they subject another person who is at least thirteen years of age, but less than sixteen years of age, to sexual penetration and the actor is at least three years older than the other person. "Sexual penetration" means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or 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.

Or

Under South Dakota law, a person commits a criminal offense when they knowingly engage in sexual contact with another person, other than that person's spouse, if the other person is under the age of sixteen years and the actor is sixteen years of age or older. "Sexual contact" means any touching, not amounting to rape, whether or not through clothing or other covering, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party.

And four, Debevec intended to persuade, induce, entice, or coerce the individual to engage in unlawful sexual activity and knowingly and willfully took some action that was a substantial step toward persuading, inducing, or enticing the individual to engage in unlawful sexual activity.

A description of what it means to take a “substantial step” is included under element one.

For you to find the defendant guilty of the crime charged in the Indictment, the government must prove all of these essential elements beyond a reasonable doubt; otherwise, you must find the defendant not guilty of the crime charged. If the government has proved all four of these elements beyond a reasonable doubt, and that the defendant was not entrapped beyond a

reasonable doubt, then you must find Debevec guilty of the count as charged in the Indictment. If the government has not proved all four of these elements beyond a reasonable doubt, then you must find Debevec not guilty of the count as charged in the Indictment.

FINAL INSTRUCTION NO. 7

“Intent” and “knowledge” are elements of the offense charged in this case and must be proven beyond a reasonable doubt. The government is not required to prove the defendant knew his acts or omissions were unlawful. An act is done “knowingly” if the defendant realizes what he is doing and does not act through ignorance, mistake, or accident. You may consider the evidence of the defendant’s words, acts, or omissions, along with all other evidence, in deciding whether the defendant acted knowingly.

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant—except whether or not he testified in court—and all the facts and circumstances in evidence which may aid in a determination of the defendant’s knowledge or 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. 8

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts in some field may state their opinions on matters in that field that may also state the reasons for their opinion.

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' 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.

FINAL INSTRUCTION NO. 9

One of the issues in this case is whether the defendant was entrapped. The government has the burden of proving beyond a reasonable doubt that the defendant was not entrapped by showing either: (1) the defendant was willing to commit the crime of attempted enticement of a minor using the internet before he was approached or contacted by Special Agent Berger; or (2) Special Agent Berger did not persuade or talk the defendant into committing attempted enticement of a minor using the internet. If you find that the government proved at least one of these two things beyond a reasonable doubt, then you must reject the defendant's claim of entrapment. If you find that the government failed to prove at least one of these two things beyond a reasonable doubt, then you must find the defendant not guilty.

The law allows the government to use undercover agents, deception, and other methods to present a person already willing to commit a crime with the opportunity to commit a crime, but the law does not allow the government to persuade an unwilling person to commit a crime. Simply giving someone a favorable opportunity to commit a crime is not the same as persuading him.

FINAL INSTRUCTION NO. 10

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. 11

You have heard evidence of a conversation on WhatsApp in which the defendant allegedly engaged, and evidence of searches the defendant allegedly conducted on Amazon.com. You may consider each piece of evidence only if you unanimously find that it is more likely true than not true that the defendant committed the act alleged. This is a lower standard of proof than beyond a reasonable doubt. You decide that by considering all of the evidence relating to the alleged act, then deciding what evidence is more believable.

If you decide that the evidence has not been proved, then you must disregard it. If you decide this evidence has been proved, then you may consider it only for the limited purpose of deciding whether the defendant had the intent to commit the crime charged in the indictment. You should give it the weight and value you believe it is entitled to receive.

The defendant is on trial only for the crime charged, and you may consider the evidence of prior acts only on the issue stated above.

FINAL INSTRUCTION NO. 12

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 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, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

This burden means that you must find the defendant not guilty of an 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. 13

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, or lack of evidence, in the case before making a decision.
- Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.
- 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. 14

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. 15

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

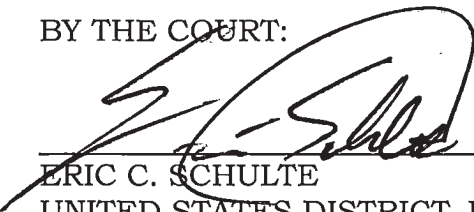
- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is guilty or not guilty. If the defendant is guilty, I will decide what the sentence should be.
- Communicate with me by sending me a note 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.
- It is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so

without violence to individual judgment, because a verdict—
whether guilty or not guilty—must be unanimous.

Good luck with your deliberations.

Dated January 10, 2025.

BY THE COURT:



ERIC C. SCHULTE
UNITED STATES DISTRICT JUDGE