

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. RYAN NIGRO, Defendant.</p>	<p>4:24-CR-40047-RAL FINAL JURY INSTRUCTIONS</p>
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FINAL INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions. The instructions I am about to give you now are in writing and will be available to you in the jury room.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important.

All instructions, whenever given and whether in writing or not, must be followed.

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 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 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

You have heard evidence that Defendant may have mentioned possessing and having marijuana available in his alleged communications with the undercover persona and that Defendant allegedly had some in his vehicle when arrested. Defendant is not charged with any offense related to marijuana possession or any drug crime of any nature. This evidence was received for the limited purpose of determining the identity of Defendant as the sender of the messages, his intent in his alleged communications with the undercover persona, and any alleged substantial step toward engaging in a sexual activity.

You have heard evidence that Defendant allegedly engaged in other conversations on the Reddit platform close in time to his conversation at issue in this case. These other conversations were received for the limited purpose of considering what Defendant's intent was in allegedly communicating on the Reddit platform with the undercover persona and whether he was entrapped. Defendant is not charged with any crime related to any other conversations and indeed communications of a sexual nature via internet with people who have reached the age of eighteen (18) are not illegal.

You viewed and heard portions of a video of a law enforcement interrogation of the Defendant. Law enforcement can and sometimes does engage in interrogation tactics, including using deception and lies. Counsel agreed on what portions of the interrogation came into evidence under the Federal Rules of Evidence. You should not concern yourself with or speculate about what matters were edited out. The statements of law enforcement during the interrogation were not admitted for the truth of the matters asserted. The evidence here is the Defendant's own statements.

FINAL INSTRUCTION NO. 5

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.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

FINAL INSTRUCTION NO. 6

The Indictment in this case charges the defendant with attempted enticement of a 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. 7

The crime, as charged in the sole count of the Indictment, has the following four essential elements, which are:

***One*, the defendant used a facility or means of interstate commerce, specifically, a cell phone or the internet, to attempt to persuade, induce, or entice an individual under the age of eighteen (18) years to engage in sexual activity;**

***Two*, the defendant believed that such individual was less than eighteen (18) years of age;**

It is not necessary for the government to prove that the individual was, in fact, less than eighteen (18) years of age. But it is necessary for the government to prove the defendant believed such individual to be under that age. Even where an undercover officer is playing the role of a minor, the defendant commits the crime of attempted enticement where he intends to entice a minor and engages in substantial conduct toward that end.

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

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 opening of another person's body.

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.

***Four*, that the defendant intended to persuade, induce, or entice the individual to engage in unlawful sexual activity and knowingly and willfully took some action that was a substantial step towards persuading, inducing, or enticing the individual to engage in unlawful sexual activity.**

It is not necessary for the government to prove that the individual was actually persuaded, induced, or enticed to engage in unlawful sexual activity. But it is necessary for the government to prove that the defendant intended to persuade,

induce, or entice the individual to engage in unlawful sexual activity and knowingly and willfully took some action that was a substantial step toward bringing about or engaging in sexual activity.

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 that it was undertaken in accordance with a design to violate the statute.

If all of these elements have been proved beyond a reasonable doubt as to the defendant and further find that he was not entrapped, then you must find the defendant Ryan Nigro guilty of the crime charged in the Indictment; otherwise, you must find the defendant not guilty of this crime.

FINAL INSTRUCTION NO. 8

Defendant has raised a claim of entrapment. Entrapment has two elements: government inducement of the crime, and the Defendant's lack of predisposition to commit the crime. If the Defendant establishes that the government induced him to commit a crime, the government must prove beyond a reasonable doubt that the Defendant was predisposed to commit the crime.

Inducement exists when the government plants the criminal design in the Defendant's mind. In deciding if there was inducement, you may consider:

- 1) Whether the government initiated the contact;
- 2) The effect of any photos sent by the government;
- 3) Whether the government introduced the topics of sex and meeting; and
- 4) The degree to which the government influenced the behavior of the Defendant by portraying the minor as sexually precocious.

Predisposition to commit the crime hinges on whether the Defendant was an unwary innocent or instead readily availed himself of the opportunity to perpetuate the crime.

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.

If the Defendant was entrapped, you should find him not guilty. If you find that the government has proven beyond a reasonable doubt all the elements of the crime charged and that Defendant was not entrapped, then you must find Defendant guilty.

FINAL INSTRUCTION NO. 9

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.

FINAL INSTRUCTION NO. 10

“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 may be proved like anything else. You may consider any statements made and acts done by a defendant, and all the facts and circumstances in evidence which may aid in the determination of a 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.

FINAL INSTRUCTION NO. 11

You have heard testimony from a person described as an expert. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and 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'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.

FINAL INSTRUCTION NO. 12

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

FINAL INSTRUCTION NO. 13

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

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, 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. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

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

Fourth, 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.

Fifth, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a smart phone, or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, Snapchat, LinkedIn, Instagram, YouTube, TikTok, X (formerly known as Twitter), or Truth Social, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Sixth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. 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.

UNITED STATES DISTRICT COURT
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<p>UNITED STATES OF AMERICA, Plaintiff, vs. RYAN NIGRO, Defendant.</p>	<p>4:24-CR-40047-RAL VERDICT FORM</p>
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find the defendant Ryan Nigro _____ (fill in either “not guilty” or “guilty”) of the crime of attempted enticement of a minor using the internet as charged in the Indictment.

Dated this _____ day of June, 2026.

Foreperson