

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

UNITED STATES OF AMERICA,  Plaintiff,  vs.  VINCENT MICHAEL PEREZ,  Defendant.	1:20-CR-10025-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. I also gave you instructions during the trial and you must follow those instructions. 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 or distribution of child pornography and transportation of child pornography. The defendant has pleaded not guilty to these charges.

As I told 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 verdicts.

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. 2f

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.

Finally, you were instructed that some evidence was received for a limited purpose only and you must follow that instruction.



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

You have heard evidence that the defendant was previously convicted of the crime of accessing child pornography. You may consider this evidence only if you unanimously find it is more likely true than not true. This is a lower standard than proof beyond a reasonable doubt. If you find that this evidence is more likely true than not true, you may consider it to help you decide whether such conduct shows the defendant's intent in this case to commit receipt, distribution, or transportation of child pornography, whether his conduct in this case was done or not done under some kind of mistake, or whether his conduct in this case was or was not an accident. You should give the evidence the weight and value you believe it is entitled to receive. If you find that evidence of a prior conviction is not more likely true than not true, then you shall disregard it.

Remember, even if you find that the defendant may have committed a similar act in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed a similar act in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of a prior act only on the issue of intent, mistake, or accident.

INSTRUCTION NO. 9

The crime of receipt or distribution of child pornography, as charged in Count 1 of the indictment, has three essential elements, which are:

1. On or about between August 7, 2019, and August 17, 2019, in the District of South Dakota, defendant voluntarily and intentionally received or distributed or attempted to receive or distribute materials that contained visual depictions of child pornography.
2. The defendant knew that the visual depictions were of a minor engaging in sexually explicit conduct, and
3. The material containing the visual depictions had been mailed, shipped, or transported, including by computer, in interstate or foreign commerce.

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. 10

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

1. On or about between August 7, 2019, and August 30, 2019, the defendant voluntarily and intentionally transported computer files that contained visual depictions of child pornography.
2. The defendant knew that the visual depictions were of a minor engaging in sexually explicit conduct, and
3. The material containing the visual depictions had been mailed, shipped, or transported, including by computer, in interstate or foreign commerce.

For you to find the defendant guilty of the 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. 11

While you have heard evidence of more than one visual depiction involved in the offenses charged, you are instructed that the government is only required to prove that the defendant received or distributed a single image. However, you must agree unanimously as to which visual depiction or depictions the defendant voluntarily and intentionally received or distributed.

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, 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 a visual image.

The term “computer” as used in this instruction includes an iPhone or Android smartphone.

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. A picture need not involve all of the factors to constitute a lascivious exhibition of the genitals or pubic area.

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 captions, if any, on the pictures. 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.

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 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.

The term “transportation” does not require conveyance to another person. The term “transportation” also constitutes simply uploading child pornography to a website.

A person may be found guilty of an “attempt” if he intended to receive or distribute child pornography and voluntarily and intentionally carried out some act which 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.



INSTRUCTION NO. 12

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. 13

The indictment charges that the offenses were committed “on or about between” certain dates. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case established beyond a reasonable doubt that the offenses were committed on a date reasonably near the dates alleged.

INSTRUCTION NO. 14

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 a verdict.

INSTRUCTION NO. 15

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. 16

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 never to reveal to any person – not even 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. 17

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.  VINCENT MICHAEL PEREZ,  Defendant.	1:20-CR-10025-CBK  VERDICT
--	----------------------------------

Please return a verdict by placing an "X" in the space provided.

COUNT 1

We, the jury in the above-entitled action, as to the crime of receipt or distribution of child pornography, as charged in Count 1 of the indictment, find Vincent Michael Perez:

\_\_\_\_ NOT GUILTY      \_\_\_\_ GUILTY

COUNT 2

We, the jury in the above-entitled action, as to the crime of transportation of child pornography, as charged in Count 2 of the indictment, find Vincent Michael Perez:

\_\_\_\_ NOT GUILTY      \_\_\_\_ GUILTY

Dated this \_\_\_\_\_ day of December, 2021.

\_\_\_\_\_  
Foreperson