

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. DUSTIN RED LEGS, Defendant.</p>	<p>3:19-CR-30073-RAL FINAL JURY INSTRUCTIONS</p>
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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 during your deliberations.

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.

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.

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.

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.

INSTRUCTION NO. 5

The superseding indictment in this case charges the defendant with three crimes. The defendant is charged with one count of aggravated sexual abuse of a child, one count of sexual exploitation of a child, and one count of possession of child pornography. The defendant has pleaded not guilty to these charges.

The superseding indictment is simply the document that formally charges the defendant with the crimes for which he is on trial. The superseding 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 crimes charged.

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

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

INSTRUCTION NO. 6

The crime of aggravated sexual abuse of a child as charged in Count I of the superseding indictment has four elements, which are:

***One*, that on or about the 24th day of September, 2018, the defendant, Dustin Red Legs, did knowingly engage in or attempt to engage in a sexual act with [NAME REDACTED];**

A “sexual act” for purposes of this instruction means the intentional touching, not through the clothing, of the genitalia of another person with the intent either to abuse, humiliate, harass or degrade, or to arouse or gratify the sexual desire of any person.

***Two*, that [NAME REDACTED] had not attained the age of twelve years at the time of the sexual act;**

***Three*, that the defendant, Dustin Red Legs, is an Indian; and**

***Four*, that the offense took place in Indian country.**

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime as charged in Count I of the superseding indictment. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 7

The crime of aggravated sexual abuse of a child as charged in Count I of the superseding indictment includes an attempt to commit aggravated sexual abuse of a child. A person may be found guilty of an attempt if he intended to commit the aggravated sexual abuse of a child and voluntarily and intentionally carried out some act which was a substantial step toward aggravated sexual abuse of a child.

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. 8

The term “Indian country” includes all land within the limits of any Indian reservation of a federally recognized Indian tribe.

A person is considered an “Indian” if that person has some Indian blood and if that person is recognized as an Indian. A person generally is recognized to be an “Indian” if that person is enrolled as a member in a federally recognized Indian tribe.

INSTRUCTION NO. 9

The crime of sexual exploitation of a child as charged in Count II of the superseding indictment has four elements, which are:

One, at the time alleged, [NAME REDACTED], was under the age of eighteen years;

The government is not required to prove that the defendant knew that [NAME REDACTED] was under the age of eighteen.

Two, the defendant, Dustin Red Legs, knowingly employed, used, persuaded, induced, enticed or coerced [NAME REDACTED] to engage in sexually explicit conduct;

A person is “used” if they are photographed or videotaped.

“Sexually explicit conduct” means actual or simulated sexual intercourse, or lascivious exhibition of the genitals or pubic area of any person.

Three, the defendant acted with the purpose of producing a visual depiction of such conduct; and

The term “visual depiction” includes any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical or other means. It includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image.

Four, the visual depiction was produced using materials that had been mailed, shipped, or transported across state lines or in foreign commerce by any means, including by computer or cellular phone.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime as charged in Count II of the superseding indictment. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 10

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 the following:

- (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 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.

INSTRUCTION NO. 11

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

One, that on or about the 24th day of September, 2018, the defendant, Dustin Red Legs, knowingly possessed material that contained a visual depiction of child pornography;

The term “visual depiction” includes any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means. It includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image.

The phrase “child pornography” means any visual depiction of a minor engaging in sexually explicit conduct.

Two, that the defendant knew that the visual depiction was of a minor engaging in sexually explicit conduct; and

“Sexually explicit conduct” means actual or simulated sexual intercourse, or lascivious exhibition of the genitals or pubic area of any person.

Three, that the material containing the visual depiction was produced using materials that had been mailed, shipped, transported, or transported by computer in interstate or foreign commerce.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime as charged in Count III of the superseding indictment. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 12

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,” as used above, 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, if the visual depiction was produced using materials that had been transmitted or received over the Internet.

INSTRUCTION NO. 13

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in the 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.

INSTRUCTION NO. 14

You have heard testimony from persons described as experts. 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.

INSTRUCTION NO. 15

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.

INSTRUCTION NO. 16

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 retire to deliberate, 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 telephone, cell phone, smart phone, iPhone, Blackberry, 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, Instagram, YouTube, or Twitter, 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. This form will be provided to you during your deliberations, 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
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. DUSTIN RED LEGS, Defendant.</p>	<p>3:19-CR-30073-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 Defendant Dustin Red Legs _____ (fill in either “guilty” or “not guilty”) of the crime of aggravated sexual abuse of a child as charged in Count I of the superseding indictment.
2. We find Defendant Dustin Red Legs _____ (fill in either “guilty” or “not guilty”) of the crime of sexual exploitation of a minor as charged in Count II of the superseding indictment.
3. We find Defendant Dustin Red Legs _____ (fill in either “guilty” or “not guilty”) of the crime of possession of child pornography as charged in Count III of the superseding indictment.

Dated July ____, 2020

Foreperson