

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. AMIN RICKER, Defendant.</p>	<p>3:17-CR-30053-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 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.

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.

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

INSTRUCTION NO. 5

The superseding indictment in this case charges the defendant with seven crimes. The defendant is charged with two counts of aggravated sexual abuse of a child, one count of travel with intent to engage in illicit sexual conduct, and one count each of transportation, distribution, receipt, and 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.

INSTRUCTION NO. 6

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

***One*, that between on or about the 1st day of November, 2014, and the 31st day of March, 2015, in the District of South Dakota and elsewhere, the Defendant, Amin Ricker, did cross a State line with intent to engage in a sexual act with _____ ;**

***Two*, that the Defendant knowingly engaged or attempted to engage in a sexual act with _____ ; and**

***Three*, that at the time, _____ was less than 12 years old.**

The Government need not prove that the Defendant knew that _____ was less than 12 years old.

If you find unanimously that the government has proved these three elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime charged in 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 II of the superseding indictment, has three elements, which are:

One, that between on or about the 1st day of November, 2014, and the 31st day of March, 2015, in the District of South Dakota and elsewhere, the Defendant, Amin Ricker, did cross a State line with intent to engage in a sexual act with _____ ;

Two, that the Defendant knowingly engaged or attempted to engage in a sexual act with _____ ; and

Three, that at the time, _____ was less than 12 years old.

The Government need not prove that the Defendant knew that _____ was less than 12 years old.

If you find unanimously that the government has proved these three elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime charged in the superseding indictment. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 8

The term “sexual act” as used in instructions 6, 7, and 9 means:

1. contact between the mouth and the penis or between the penis and the vulva; or
2. the penetration, however slight, of the genital opening of another by a hand or finger, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
3. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 12 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

INSTRUCTION NO. 9

The crime of travel with intent to engage in illicit sexual conduct, as charged in Count III of the superseding indictment, has two elements, which are:

***One*, that between on or about the 1st day of November, 2014, and the 31st day of March, 2015, in the District of South Dakota and elsewhere, the Defendant, Amin Ricker, did travel in interstate commerce, or attempted to do so; and**

***Two*, that Defendant's purpose in traveling in interstate commerce was to engage in illicit sexual conduct with a person under 12 years of age.**

If you find unanimously that the government has proved these two elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime charged in the superseding indictment. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 10

As used in instruction 9, the term “illicit sexual conduct” means:

- (A) a sexual act (as defined in instruction 8) with a person under 12 years of age; or
- (B) any commercial sex act (which means any sex act, on account of which anything of value is given to or received by any person) with a person under 12 years of age; or
- (C) production of child pornography.

INSTRUCTION NO. 11

For Count III, the United States does not need to prove that the Defendant's only purpose or even his dominant purpose for traveling in interstate commerce was to engage in illicit sexual contact with a minor. It is enough if one of the Defendant's significant or compelling motives for traveling in interstate commerce was to engage in illicit sexual contact with a minor. An additional innocent motivation for travel, in and of itself, does not preclude the intent to engage in illicit sexual activities from also being a compelling or significant motive for the travel in interstate commerce. However, the sexual activity must be more than merely incidental to the trip.

INSTRUCTION NO. 12

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

***One*, that between on or about the 1st day of November, 2014, and the 31st day of March, 2015, in the District of South Dakota and elsewhere, the Defendant, Amin Ricker, knowingly mailed or transported or shipped in interstate or foreign commerce, including by computer, visual depictions of child pornography;**

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

***Three*, that the Defendant knew that one or more persons depicted in the visual depictions was under the age of eighteen years.**

If you find unanimously that the government has proved these three elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime charged in the superseding indictment. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 13

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

***One*, that between on or about the 5th day of May, 2015, and the 14th day of February, 2017, in the District of South Dakota and elsewhere, the Defendant, Amin Ricker, knowingly distributed visual depictions of child pornography;**

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

***Three*, that the visual depictions had been mailed or shipped or transported by computer in interstate or foreign commerce.**

If you find unanimously that the government has proved these three elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime charged in the superseding indictment. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 14

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

***One*, that between on or about the 5th day of May, 2015, and the 14th day of February, 2017, in the District of South Dakota and elsewhere, the Defendant, Amin Ricker, knowingly received visual depictions of child pornography;**

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

***Three*, that the visual depictions had been mailed or shipped or transported by computer in interstate or foreign commerce.**

If you find unanimously that the government has proved these three elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime charged in the superseding indictment. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 15

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

***One*, that between on or about the 5th day of May, 2015, and the 14th day of February, 2017, in the District of South Dakota and elsewhere, the Defendant, Amin Ricker, knowingly possessed visual depictions of child pornography;**

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

***Three*, that the visual depictions were produced using material that had been mailed or shipped or transported by computer in interstate or foreign commerce.**

If you find unanimously that the government has proved these three elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime charged in the superseding indictment. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. 16

The term “minor” means any person under the age of eighteen years.

The phrase “child pornography” means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct.

The term “visual depiction” includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format.

The term “sexually explicit conduct” means actual or simulated

- (A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; or
- (B) masturbation; or
- (C) sadistic or masochistic abuse; or
- (D) lascivious exhibition of the anus, genitals, or pubic area of any person.

INSTRUCTION NO. 17

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 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. 18

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.

The term “commerce” includes, among other things, travel, trade, transportation and electronic communication.

Images transmitted or received over the internet commonly move in interstate or foreign commerce. It is for you to determine, however, if the visual depiction had been transmitted or received over the internet such that interstate or foreign commerce is involved.

With respect to Count VII, it is for you to determine if the visual depiction was produced using material that had been mailed or shipped or transported in interstate and foreign commerce.

INSTRUCTION NO. 19

In the crimes of aggravated sexual abuse of a child, as charged in Counts I and II of the superseding indictment, there must exist in the mind of the perpetrator the specific intent to engage in a sexual act with the person alleged. If the Defendant acted without such specific intent, the crime of aggravated sexual abuse of a child has not been committed. Similarly, in the crime of travel with the intent to engage in illicit sexual conduct, as charged in Count III of the superseding indictment, there must exist in the mind of the perpetrator the specific intent to engage in illicit sexual conduct with a person he believes to be under 12 years of age. If the Defendant acted without such specific intent, the crime of travel with intent to engage in illicit sexual conduct has not been committed. There is no such requirement for the crimes involving child pornography, as charged in Counts IV through VII of the superseding indictment.

Evidence has been presented of the Defendant's mental health diagnoses. Such evidence may be inconsistent with the specific intent required in Counts I through III. If after considering the evidence of the Defendant's mental health diagnoses, together with all the other evidence, you have a reasonable doubt that the Defendant acted with the requisite specific intent, you must find the Defendant not guilty.

Evidence of the Defendant's mental health diagnoses is not relevant to the crimes involving child pornography, as charged in Counts IV through VII of the superseding indictment.

INSTRUCTION NO. 20

Counts I and II as charged in the superseding indictment include an attempt to travel with intent to engage in a sexual act. A person may be found guilty of an attempt if he intended to engage in the sexual act and voluntarily and intentionally carried out some act which was a substantial step toward that sexual act.

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. 21

You have heard evidence that the Defendant may have previously committed other offenses of child molestation, that is conduct allegedly of sexually abusing children or regarding child pornography. The Defendant is not charged with these other offenses. 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 these offenses have not been proved, you must disregard them. If you find that these offenses have been proved, you may consider them to help you decide any matter to which they are relevant. You should give them the weight and value you believe they are entitled to receive. You may consider the evidence of such other acts of child molestation for its tendency, if any, to show the defendant's propensity to engage in child molestation, as well as its tendency, if any, to determine the defendant's intent, determine the defendant's motive to commit the acts charged in the superseding indictment, determine the Defendant's knowledge, and rebut the contention of the Defendant that his participation in the offenses charged was the result of accident or mistake.

Remember, the defendant is on trial only for the crimes charged. You may not convict a person simply because you believe he may have committed similar acts in the past.

INSTRUCTION NO. 22

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 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.

The government is not required to prove that the defendant knew that his actions 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.

INSTRUCTION NO. 23

Presence of child pornography images in a computer's temporary cache file is not sufficient to establish the defendant's knowing possession of the images. One cannot be guilty of possession for simply having viewed an image, thereby causing the images to be automatically stored in the browser's cache, without having purposely saved or downloaded the image.

INSTRUCTION NO. 24

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' 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. 25

You have heard the testimony of law enforcement officers. The fact that a witness is employed as a law enforcement officer does not mean that his or her testimony necessarily deserves more or less consideration or greater or lesser weight than that of any other witness. You must decide, after reviewing all the evidence, whether you believe the testimony of the law enforcement witness and how much weight, if any, it deserves.

INSTRUCTION NO. 26

You have heard evidence that Rhonda Mackey has made a plea agreement with the prosecution in a related case. Her testimony was received in evidence and may be considered by you. You may give her testimony such weight as you think it deserves. Whether or not her testimony may have been influenced by the plea agreement is for you to determine.

INSTRUCTION NO. 27

This Court has received into evidence certain exhibits and testimony concerning the defendant's Beadle County criminal case. The defendant having been charged in Beadle County with similar crimes is not evidence that he committed any of the offenses alleged in the superseding indictment. Testimony concerning defendant's alleged actions toward Shyanne Jensen, if you believe the testimony, may be considered by you in deciding whether the defendant is guilty or not guilty of any crime charged in the superseding indictment.

The defendant is not on trial for any conduct in Beadle County, and you should be mindful of the date ranges alleged in the superseding indictment in this case when deciding if the defendant is guilty or not guilty of any of the crimes charged. Defendant is not alleged in this case to be guilty of possession of child pornography simply because his electronic devices were returned to him by Beadle County authorities without being purged of content. Defendant is only guilty of possession of child pornography if he knowingly acquired additional images of child pornography after the return of his electronic devices by Beadle County authorities or possessed child pornography during the time frame alleged through other devices not returned to the defendant by Beadle County authorities.

This Court has received into evidence certain cover sheets created by Special Agent Toby Russell to explain from which device and file and subfile he extracted certain information and images. Some of these cover sheets and some of Special Agent Russell's testimony characterized images as "child pornography" and named someone whom Special Agent Russell believed to be the subject of the image or exhibit. It is for you to decide based on the evidence and these instructions what, if any, images constitute child pornography and who is pictured in any image. Special Agent Russell's cover sheets are not by themselves any evidence that images are child pornography or who the exhibits necessarily concern.

INSTRUCTION NO. 28

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. 29

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 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. 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
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. AMIN RICKER, Defendant.</p>	<p>3:17-CR-30053-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 Amin Ricker _____ (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 Amin Ricker _____ (fill in either “guilty” or “not guilty”) of the crime of aggravated sexual abuse of a child, as charged in Count II of the superseding indictment.
3. We find Defendant Amin Ricker _____ (fill in either “guilty” or “not guilty”) of the crime of travel with intent to engage in illicit sexual conduct, as charged in Count III of the superseding indictment.
4. We find Defendant Amin Ricker _____ (fill in either “guilty” or “not guilty”) of the crime of transportation of child pornography, as charged in Count IV of the superseding indictment.
5. We find Defendant Amin Ricker _____ (fill in either “guilty” or “not guilty”) of the crime of distribution of child pornography, as charged in Count V of the superseding indictment.
6. We find Defendant Amin Ricker _____ (fill in either “guilty” or “not guilty”) of the crime of receipt of child pornography, as charged in Count VI of the superseding indictment.
7. We find Defendant Amin Ricker _____ (fill in either “guilty” or “not guilty”) of the crime of possession of child pornography, as charged in Count VII of the superseding indictment.

Dated March ____, 2019

Foreperson