

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SKY THOMAS ROUBIDEAUX,

Defendant.

4:22-CR-40033

FINAL JURY INSTRUCTIONS

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.

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. This is true even though some of those I gave you at the beginning of the trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, 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.

You should not be influenced by any person's race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, disability, or economic circumstances. You must decide the case solely on the evidence and the law before you and must not be influenced by any personal likes or dislikes, opinions, prejudices, sympathy, or biases, including unconscious bias. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may express without conscious awareness, control, or intention. Like conscious bias, unconscious bias, too, can affect how we evaluate information and make decisions.

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 any facts that have been stipulated—that is, formally agreed to by the parties, and any facts that have been judicially noticed—that is, facts which I say you may, but are not required to, accept as true, even without evidence.

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 will 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.

Finally, if you were instructed that some evidence was received for a limited purpose only, 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 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

There is nothing particularly different in the way that you should consider the evidence in a trial from that in which any reasonable and careful person would treat any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case. Use the evidence only for those purposes for which it has been received and give the evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions of the Court. Remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence because the burden of proving guilt beyond a reasonable doubt is always assumed by the government.

INSTRUCTION NO. 6e

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes no distinction between the weight or value 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 him not guilty.

INSTRUCTION NO. 7

If you took notes during the trial, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the proceedings. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

INSTRUCTION NO. 8

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. 9

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.

INSTRUCTION NO. 10

The Indictment in this case charges that on or about March 7, 2022, in the District of South Dakota and elsewhere, the defendant, Sky Thomas Roubideaux, did attempt to use a facility and means of interstate commerce, that is, a cell phone, to knowingly persuade, induce, entice, or coerce an individual, who had not yet attained the age of 18, namely an undercover law enforcement officer posing as a 15 year-old male, to engage in sexual activity for which the defendant could be charged with a criminal offense, namely, criminal sexual conduct in violation of South Dakota Codified Law §§ 22-22-1, 22-22-7, and 22-22-24.3, all in violation of 18 U.S.C. § 2422(b).

The defendant has pleaded not guilty to these charges. There is no burden upon the defendant to prove that he is innocent of the charges against him.

INSTRUCTION NO. 11

You must presume that the defendant is innocent of the crime charged against him. The Indictment is only a formal method of beginning a criminal case. It does not create any presumption of guilt; it is merely an accusation. The fact that a person has been indicted does not create any inference, nor is it evidence, that he is guilty of a crime. The presumption of innocence alone is sufficient to acquit the defendant unless you as jurors are satisfied beyond a reasonable doubt of the defendant's guilt of the crime charged from all the evidence that has been introduced in the case against him.

The burden is always upon the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. Unless the government proves, beyond a reasonable doubt, that the defendant committed each and every element of an offense charged against him in the Indictment, you must find the defendant not guilty of that offense.

There is no burden upon the defendant to prove that he is innocent.

INSTRUCTION NO. 12

Section 2422(b) of Title 18 of the United States Code provides that it is unlawful for any person to use a facility or means of interstate commerce to knowingly persuade, induce, entice, or coerce an individual who has not attained the age of 18 years, to engage in any sexual activity for which the defendant could be charged with a criminal offense.

It is also unlawful to attempt to violate section 2422(b).

INSTRUCTION NO. 13

The crime of using a facility or means of interstate commerce to attempt to persuade, induce, entice, or coerce anyone under eighteen (18) years of age to engage in sexual activity, as charged in the Indictment, has four essential elements, which are:

- One*, that on or about March 7, 2022, in the District of South Dakota and elsewhere, the defendant knowingly used a facility or means of interstate commerce, that is, a cell phone, to attempt to persuade or induce or entice or coerce an individual who was under the age of eighteen (18) to engage in sexual activity;
- Two*, that the defendant believed that such individual was less than eighteen (18) years of age;
- Three*, that if the sexual activity had occurred, the defendant could have been charged with a criminal offense under South Dakota law;
- Four*, that the defendant intended to engage in unlawful sexual activity with a minor and knowingly and willfully took some action that was a substantial step toward bringing about or engaging in unlawful sexual activity with a minor.

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

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.

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

Fourth Degree Rape and Sexual Contact with a Child Under Sixteen are crimes under the laws of the State of South Dakota.

INSTRUCTION NO. 13, continued

Under South Dakota law, a person commits the crime of Fourth Degree Rape when he subjects 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. 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.

Under South Dakota law, a person commits the crime of Sexual Contact with a Child Under Sixteen when he knowingly engages in sexual contact with another person under the age of sixteen and the actor is at least 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.

The crime charged in the Indictment is an attempt to entice a minor using the internet. 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 enticement of a minor using the internet.

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. 14

One of the issues in this case is whether the defendant was entrapped. The prosecution has the burden of proving beyond a reasonable doubt that the defendant was not entrapped by showing the government, or someone acting for the government, did not persuade or talk the defendant into committing attempted enticement of a minor using the internet. If you find that the prosecution proved the above beyond a reasonable doubt, then you must reject the defendant's claim of entrapment. If you find that the prosecution failed to prove the above 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.

INSTRUCTION NO. 15

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 must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in life's most important decisions. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 3.11 (2022) (modified); O'Malley, Grenig and Lee, *Federal Jury Practice and Instructions*, § 12.10 (6th ed. 2008) (modified); Defendant's Proposed Instruction No. 4 (modified).

INSTRUCTION NO. 16

“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 statements made and acts done by the defendant, 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.⁶

INSTRUCTION NO. 17

The Indictment charges that the offense was committed “on or about” March 7, 2022. Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

O'Malley, Grenig and Lee, *Federal Jury Practice and Instructions*, § 13.05 (6th ed. 2008) (modified); *Eighth Circuit Manual of Model Jury Instructions Criminal*, § 3.14 (2022) (modified).

INSTRUCTION NO. 18

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I will 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 government 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, 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 vote stands numerically.

Fifth, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. The verdicts, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decisions that you reach in this case. You will take this form to the jury room, and when each of you has agreed upon the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal that you are ready to return to the courtroom.

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VERDICT FORM

Please return your verdict by placing an "X" or "✓" in one of the spaces provided.

VERDICT ONE

We, the jury in the above entitled and numbered case, as to the crime of using a facility or means of interstate commerce to attempt to persuade, induce, entice, or coerce a person under eighteen (18) years of age to engage in sexual activity, find the Defendant, Sky Thomas Roubideaux:

_____ NOT GUILTY

_____ GUILTY

Dated this _____ day of April, 2023.

FOREPERSON