

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	2:05-CR-54 PS
)	
BRANDON CANDIANO)	

FINAL JURY INSTRUCTIONS

Dated: February 10, 2006

s/ Philip P. Simon
Philip P. Simon, Judge
United States District Court

COURT'S FINAL INSTRUCTION NO. 1

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

COURT'S FINAL INSTRUCTION NO. 2

The evidence consists of the testimony of the witnesses and the exhibits admitted in evidence.

I have taken judicial notice of three Indiana state statutes that were in full force and effect during the relevant period.

COURT'S FINAL INSTRUCTION NO. 3

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness's age;
- the witness's intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

COURT'S FINAL INSTRUCTION NO. 4

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

COURT'S FINAL INSTRUCTION NO. 5

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

COURT'S FINAL INSTRUCTION NO. 6

Certain things are not evidence. I will list them for you:

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

COURT'S FINAL INSTRUCTION NO. 7

It is proper for an attorney to interview any witness in preparation for trial.

COURT'S FINAL INSTRUCTION NO. 8

The superseding indictment in this case is the formal method of accusing the defendant of an offense and placing the defendant on trial. It is not evidence against the defendant and does not create any inference of guilt.

The defendant is charged with two counts of Coercion and Enticement of a Minor Through the Use of a Facility of Interstate Commerce. The defendant has pleaded not guilty to the charges.

COURT'S FINAL INSTRUCTION NO. 9

The defendant is presumed to be innocent of the charges. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt. This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

COURT'S FINAL INSTRUCTION NO. 10

The defendant has an absolute right not to testify. The fact that the defendant did not testify should not be considered by you in any way in arriving at your verdict.

COURT'S FINAL INSTRUCTION NO. 11

You have received evidence of a statement said to be made by the defendant to various individuals. You must decide whether the defendant did in fact make the statement. If you find that the defendant did make the statement, then you must decide what weight, if any, you feel the statement deserves. In making this decision, you should consider all matters in evidence having to do with the statement, including those concerning the defendant himself and the circumstances under which the statement was made.

COURT'S FINAL INSTRUCTION NO. 12

You have heard evidence of acts of the defendant other than those charged in the superseding indictment. You may consider this evidence only on the question of the defendant's knowledge, intent, method of operation, and absence of mistake. You should consider this evidence only for this limited purpose.

COURT'S FINAL INSTRUCTION NO. 13

You have heard evidence regarding why the computer was unavailable for further examination. You may consider this evidence only for the purpose of understanding why the government did not examine the computer. You should consider this evidence only for this limited purpose. You may not consider it for any other purpose.

COURT'S FINAL INSTRUCTION NO. 14

You have heard recorded conversations. These recorded conversations are proper evidence and you may consider them, just as any other evidence.

When the recordings were played during the trial, you were furnished transcripts of the recorded conversations.

The recordings are the evidence, and the transcripts were provided to you as a guide to help you follow as you listen to the recordings. It is up to you to decide whether the transcripts correctly reflect what was said and who said it. If you noticed any difference between what you heard on the recordings and what you read in the transcripts, you must rely on what you heard, not what you read. And if after careful listening, you could not hear or understand certain parts of the recordings, you must ignore the transcripts as far as those parts are concerned.

COURT'S FINAL INSTRUCTION NO. 15

The defendant is charged in Counts One and Two of the superseding indictment with violations of Title 18, United States Code, Section 2422(b), which states:

“Whoever, using any facility or means of interstate or foreign commerce, knowingly attempts to persuade, induce, entice, or coerce any individual who has not attained the age of 18 years, to engage in any sexual activity for which any person can be charged with a criminal offense, violates this section.”

COURT'S FINAL INSTRUCTION NO. 16

To sustain the charges in Counts One and Two of the superseding indictment, the government must prove the following propositions:

First: The defendant used a facility of interstate commerce;

Second: In an attempt;

Third: To knowingly persuade, induce, entice, or coerce a person under 18 years of age;

Fourth: To engage in any sexual activity for which any person can be charged with a criminal offense.

If you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of that charge.

If, on the other hand, you find from your consideration of all of the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of that charge.

COURT'S FINAL INSTRUCTION NO. 17

As used in Title 18, United States Code, § 2422(b), the phrase “to engage in any sexual activity for which any person can be charged with a criminal offense,” means that the act or conduct attempted by the defendant must have been in violation of some state or federal law. In this case, the government has alleged that the defendant’s conduct was a criminal offense under the laws of the State of Indiana.

COURT'S FINAL INSTRUCTION NO. 18

Indiana Criminal Code IC 35-42-4-6, entitled "Child Solicitation," was in full force and effect during the relevant time period.

This statute states as follows:

(a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

- (1) in person;
- (2) by telephone;
- (3) in writing;
- (4) by using a computer network;
- (5) by advertisement of any kind; or
- (6) by any other means;

to perform an act described in subsection (b).

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of

either the child or the older person;

commits child solicitation.

COURT'S FINAL INSTRUCTION NO. 19

Indiana Criminal Code IC 35-42-4-5, entitled "Vicarious Sexual Gratification," was in full force and effect during the relevant time period.

This statute states as follows:

(a) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to touch or fondle himself with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification.

COURT'S FINAL INSTRUCTION NO. 20

Indiana Criminal Code IC 35-41-5-1 was in full force and effect during the relevant time period.

This statute states as follows:

(a) A person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime.

(b) It is no defense that, because of a misapprehension of the circumstances, it would have been impossible for the accused person to commit the crime attempted.

COURT'S FINAL INSTRUCTION NO. 21

It is not a defense that the person whom the defendant communicated with in either Count One or Count Two was not in fact an actual minor, but rather an adult posing as a minor.

COURT'S FINAL INSTRUCTION NO. 22

Under Title 18, United States Code, §2422(b), it is not necessary for the government to prove that the defendant traveled to meet an actual minor or an adult posing as a minor.

COURT'S FINAL INSTRUCTION NO. 23

The superseding indictment charges that the offense was committed “on or about” certain dates. The government must prove that the offense happened reasonably close to that date but is not required to prove that the alleged offense happened on an exact date.

COURT'S FINAL INSTRUCTION NO. 24

When the word “knowingly” is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident.

Knowledge may be proved by the defendant’s conduct, and by all the facts and circumstances surrounding the case.

You may infer knowledge from a combination of suspicion and indifference to the truth. If you find that a person had a strong suspicion that things were not what they seemed or that someone had withheld some important facts, yet shut his eyes for fear of what he would learn, you may conclude that he acted knowingly, as I have used that word. You may not conclude that the defendant had knowledge if he was merely negligent in not discovering the truth.

COURT'S FINAL INSTRUCTION NO. 25

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

COURT'S FINAL INSTRUCTION NO. 26

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

COURT'S FINAL INSTRUCTION NO. 27

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.