

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL GOODALE,

Defendant.

No. 12-CR-3011-LRR

**FINAL JURY INSTRUCTIONS**

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Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will 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 and during 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. 1**

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

**INSTRUCTION NO. 2**

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

**INSTRUCTION NO. 3**

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 just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

#### **INSTRUCTION NO. 4**

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the 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 the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties 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.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

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

**INSTRUCTION NO. 5**

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

**INSTRUCTION NO. 6**

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. 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. 7**

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

You have heard evidence that certain witnesses were once convicted of a crime. You may use that evidence only to help you decide whether to believe these witnesses and how much weight to give their testimony.

You have heard evidence that certain witnesses have made plea agreements with the government. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the plea agreement is for you to determine.

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**INSTRUCTION NO. 7 (Cont'd)**

You have heard evidence that certain witnesses hope to receive a reduced sentence in return for the witnesses' cooperation with the government in this case. If the prosecutor handling a witness's case believes the witness provided substantial assistance, that prosecutor can file in the court in which the witness was sentenced a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it. You may give the testimony of these witnesses such weight as you think it deserves. Whether or not the testimony of the witnesses may have been influenced by the witnesses' hopes of receiving a reduced sentence is for you to decide.

**INSTRUCTION NO. 8**

You have heard testimony that the defendant made statements to certain witnesses and law enforcement. It is for you to decide:

*First*, whether the defendant made the statements; and

*Second*, if so, how much weight you should give to them.

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statements may have been made.

**INSTRUCTION NO. 9**

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

Expert testimony should be considered just like any other testimony. You may accept it 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. 10**

You have heard audio recordings of conversations. These conversations were legally recorded, and you may consider the recordings just like any other evidence.

**INSTRUCTION NO. 11**

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they were received by you.

**INSTRUCTION NO. 12**

The government and the defendant have stipulated—that is, they have agreed—that certain facts are as counsel have stated. You must, therefore, treat those facts as having been proved.

### INSTRUCTION NO. 13

The Indictment in this case charges the defendant with five separate crimes.

Under Count 1, the Indictment charges that, between about 2008 and August 29, 2010, in the Northern District of Iowa and elsewhere, the defendant knowingly crossed a state line with the intent to engage in a sexual act with M.R., a person under the age of 12 years.

Under Count 2, the Indictment charges that, between about 2008 and August 25, 2010, in the Northern District of Iowa and elsewhere, the defendant knowingly crossed a state line with the intent to engage in a sexual act with Z.G., a person under the age of 12 years.

Under Count 3, the Indictment charges that, between about 2008 and September 2011, in the Northern District of Iowa and elsewhere, the defendant knowingly transported M.R., a person who had not attained the age of 18 years, across a state line with the intent that M.R. engage in sexual activity for which any person can be charged with a criminal offense under the laws of the State of Minnesota.

Under Count 4, the Indictment charges that, between about 2008 and September 2011, in the Northern District of Iowa and elsewhere, the defendant knowingly transported Z.G., a person who had not attained the age of 18 years, across a state line with the intent that Z.G. engage in sexual activity for which any person can be charged with a criminal offense under the laws of the State of Minnesota.

Under Count 5, the Indictment charges that, between about February 2011 and September 2011, in the Northern District of Iowa, the defendant knowingly accessed with intent to view visual depictions of minors engaged in sexually explicit conduct, said visual depictions having been produced using materials that had been shipped or transported in or affecting interstate or foreign commerce, or said visual depictions having been transported using a means or facility of interstate or foreign commerce.

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**INSTRUCTION NO. 13 (Cont'd)**

The defendant has pleaded not guilty to each of these charges.

As I told you 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. Thus the defendant, even though charged, begins the trial with no evidence against him. The 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 element of the crime charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

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.

**INSTRUCTION NO. 14**

The crime of aggravated sexual abuse, as charged in Counts 1 and 2 of the Indictment, has three elements, which are:

*One*, during the time period alleged in the count under consideration by you, the defendant knowingly crossed a state line;

*Two*, the defendant did so with the intent to engage in a sexual act with a person, specifically, M.R. under Count 1 and Z.G. under Count 2; and

*Three*, such person had not attained the age of 12 years.

It is not necessary for the government to prove that the defendant knew that M.R. or Z.G. had not, in fact, attained the age of 12 years.

If the government proves all of these elements beyond a reasonable doubt as to the count under consideration by you, then you must find the defendant guilty of that count. Otherwise, you must find the defendant not guilty of the count under consideration by you.

**INSTRUCTION NO. 15**

For purposes of Counts 1 and 2 of the Indictment, the term “sexual act” includes contact between the mouth and the penis, or the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to arouse or gratify the sexual desire of any person.

**INSTRUCTION NO. 16**

The crime of interstate transportation of a minor with the intent to engage in criminal sexual activity, as charged in Counts 3 and 4 of the Indictment, has four elements, which are:

*One*, during the time period alleged in the count under consideration by you, the defendant knowingly transported across a state line a person, specifically, M.R. under Count 3 and Z.G. under Count 4;

*Two*, the defendant transported the person with the intent that such person engage in oral sex or masturbation with the defendant;

*Three*, the person was under the age of 18 years; and

*Four*, oral sex or masturbation between the person and the defendant was a crime under the laws of the State of Minnesota.

If the government proves all of these elements beyond a reasonable doubt as to the count under consideration by you, then you must find the defendant guilty of that count. Otherwise, you must find the defendant not guilty of the count under consideration by you.

**INSTRUCTION NO. 17**

For purposes of Counts 3 and 4 of the Indictment, under Minnesota law, the following are crimes:

1. A person who engages in sexual penetration with a minor is guilty of a crime if the minor is under 13 years of age and the actor is more than 36 months older than the minor. Mistake as to the minor's age is not a defense. Consent to the act by the minor is not a defense.

2. A person who engages in sexual penetration with a minor is guilty of a crime if the minor is at least 13 but less than 16 years of age and the actor is more than 24 months older than the minor. If the actor is no more than 120 months older than the minor, then it is an affirmative defense, which the actor must prove by a preponderance of the evidence, that the actor reasonably believed the minor to be 16 years of age or older. In all other cases, mistake as to the minor's age is not a defense. Consent to the act by the minor is not a defense.

3. A person who engages in sexual contact with a minor is guilty of a crime if the minor is under 13 years of age and the actor is more than 36 months older than the minor. Mistake as to the minor's age is not a defense. Consent to the act by the minor is not a defense.

4. A person who engages in sexual contact with a minor is guilty of a crime if the minor is at least 13 but less than 16 years of age and the actor is more than 48 months older than the minor. If the actor is no more than 120 months older than the minor, then it is an affirmative defense, which the actor must prove by a preponderance of the evidence, that the actor reasonably believed the minor to be 16 years of age or older. In all other cases, mistake as to the minor's age is not a defense. Consent to the act by the minor is not a defense.

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**INSTRUCTION NO. 17 (Cont'd)**

For purposes of Counts 3 and 4 of the Indictment, under Minnesota law, the following definitions apply:

1. "Actor" means a person accused of criminal sexual conduct.
2. "Sexual penetration" includes oral sex performed on the male genital, whether or not emission of semen occurs.
3. "Sexual contact" includes the following acts committed with sexual or aggressive intent:
  - a. The intentional touching by the actor of the minor's intimate parts;
  - b. The touching by the minor of the actor's intimate parts, effected by a person in a position of authority; or
  - c. In either of the cases above, the touching of the clothing covering the immediate area of the intimate parts.
4. "Intimate parts" includes the primary genital area, groin, inner thigh, buttocks or breast of a human being.
5. "Position of authority" includes a person who is charged with any duty or responsibility for the health, welfare or supervision of a child, no matter how brief, at the time of the act.

You are also instructed that the phrase "preponderance of the evidence," as used in this instruction, means that you find that the fact is more likely true than not true.

**INSTRUCTION NO. 18**

The crime of accessing child pornography, as charged in Count 5 of the Indictment, has three elements, which are:

*One*, between about February 2011 and September 2011, the defendant knowingly accessed with intent to view one or more visual depictions of child pornography;

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

*Three*, the visual depiction was or depictions were produced using materials that had been transported in interstate or foreign commerce, namely, a computer hard drive that was manufactured outside the State of Iowa, or, alternatively, the visual depiction was or depictions were transported using a means or facility of interstate or foreign commerce, namely, the Internet.

If the government proves all of these elements beyond a reasonable doubt as to Count 5, then you must find the defendant guilty of that count. Otherwise, you must find the defendant not guilty of Count 5.

**INSTRUCTION NO. 19**

For purposes of Count 5 of the Indictment, the following definitions apply:

“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 the production of the depiction.

“Minor” means any person under the age of 18 years.

“Sexually explicit conduct” means actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person.

Not every exposure of the genitals or pubic area constitutes lascivious exhibition. 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 caption on the picture.

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.

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**INSTRUCTION NO. 19 (Cont'd)**

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

“Interstate commerce” means commerce between any combination of states, territories and possessions of the United States, including the District of Columbia.

“Foreign commerce” means commerce between any state, territory or possession of the United States and a foreign country.

“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 a visual depiction had been transmitted or received over the Internet.

“Transported in interstate or foreign commerce” means that the item or items described, at any time, traveled or moved between one state and another or one country and another. It is not necessary for the government to prove that the defendant personally transported the material in interstate or foreign commerce. It is sufficient that the government prove that at some point before or during the charged conduct, the hard drive traveled in interstate or foreign commerce.

**INSTRUCTION NO. 20**

Regarding Count 5, the government has alleged that multiple visual depictions constitute child pornography. It is not necessary for the government to prove that all of the visual depictions constitute child pornography. It would be sufficient if the government proves, beyond a reasonable doubt, that one of the visual depictions constitutes child pornography. In that event, to return a verdict of guilty on Count 5, you must unanimously agree which of the visual depictions constitutes child pornography. If you are unable to unanimously agree, you cannot find the defendant guilty of the crime charged in Count 5.

**INSTRUCTION NO. 21**

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

**INSTRUCTION NO. 22**

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done “knowingly” if a defendant is aware of the act and did not act through ignorance, mistake or accident. You may consider the evidence of the defendant’s acts and words, along with other evidence, in deciding whether the defendant acted knowingly.

**INSTRUCTION NO. 23**

You will note that the Indictment charges that the offenses were committed “between about” certain dates. The government need not prove with certainty the exact dates or the exact time period of the offenses charged. It is sufficient if the evidence establishes that the offenses occurred within a reasonable time of the dates or period of time alleged in the Indictment.

**INSTRUCTION NO. 24**

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. 25**

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

## INSTRUCTION NO. 26

In conducting your deliberations and returning your verdicts, 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 an agreement if you can do so without violence to individual judgment, because each of your verdicts—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 your verdicts.

*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 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*, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, 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.

**INSTRUCTION NO. 27**

Attached to these instructions you will find the Verdict Forms and Interrogatory Form. These are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms and Interrogatory Form must be the unanimous decisions of the Jury.

You will take the Verdict Forms and Interrogatory Form to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms and Interrogatory Form, your foreperson will fill out the Verdict Forms and Interrogatory Form, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Forms and Interrogatory Form in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the Jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms and Interrogatory Form in accord with the evidence and these instructions.

July 5, 2012  
Date

Linda R. Reade  
Linda R. Reade, Chief Judge  
United States District Court  
Northern District of Iowa