

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:03CR-25-J

JAMES CHRISWELL

DEFENDANT

**JURY INSTRUCTIONS**

Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished you will go to the jury room and begin your deliberations.

It will be your duty to decide whether the United States has proved beyond a reasonable doubt the specific facts necessary to find the defendant guilty of the crimes charged in the indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial; and you must not be influenced in any way by either sympathy or prejudice for or against the defendant or the United States.

You must also follow the law as I explain it to you whether you agree with that law or not. You must follow all of the instructions as a whole; you may not single out, or disregard, any of the court's instructions on the law.

The indictment or formal charge against any defendant is not evidence of guilt. The defendant is presumed by the law to be innocent. The law does not require a defendant to prove innocence or produce any evidence at all. This means that a defendant has no obligation to testify. Therefore, if a defendant does not testify during a trial, you may not draw any inference or suggestion of guilt from that fact, nor may you consider this in any way in reaching your verdict. The United States has the burden of proving a defendant guilty beyond a reasonable doubt, and if it fails to do so you must find the defendant not guilty.

While the United States' burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the United States' proof exclude any "reasonable doubt" concerning a defendant's guilt.

A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

You must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses and the exhibits admitted in the record. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make. You need not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that the defendant is either guilty or not guilty. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Now, in saying that you must consider the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling.

In deciding how much of a witness' testimony to believe, I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth or a personal interest in the outcome of the case? Did the witness have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did the witness appear to understand the questions clearly and answer them directly?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony given before you during the trial.

However, a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that was simply an innocent lapse of memory or an intentional falsehood.

### Count 1

Title 18, United States Code, Section 2422(b), makes it a federal crime for anyone, using any means or facility of interstate commerce to knowingly persuade, induce, or entice anyone under eighteen (18) years of age to engage in any sexual activity for which any person could be charged with a criminal offense.

The defendant can be found guilty as to Count 1 only if all of the following facts are proved beyond a reasonable doubt:

First: That the defendant used a facility or means of interstate commerce to attempt to persuade, induce, or entice an individual under the age of eighteen (18) to engage in sexual activity, as charged;

Second: That the defendant believed that such individual was less than sixteen (16) years of age;

Third: That if the sexual activity had occurred, the commission of the act could have been charged as a criminal offense under the laws of the Commonwealth of Kentucky; and

Fourth: That the defendant acted knowingly and willfully.

It is not necessary for the United States to prove that the individual was in fact less than sixteen (16) years of age or that she actually existed; but it is necessary for the United States to prove that the defendant believed such individual to be under that age.

The United States must prove that if the intended sexual activity had occurred, it would have been illegal under Kentucky law.

It is a violation of Kentucky law for a person twenty-one (21) years old or more, to engage in sexual intercourse with another person believed by him to be less than sixteen (16) years old.

“Interstate commerce” is commerce between one state and any other state.

## Count 2

Title 18, United States Code, Section 2423(b), makes it a federal crime for anyone to travel in interstate commerce for the purpose of engaging in any sexual act that would be in violation of federal law.

The defendant can be found guilty as to Count 2 only if all of the following facts are proved beyond a reasonable doubt:

First: That the defendant traveled in interstate commerce, that is, that he traveled from one state to another state;

Second: That at the time of the interstate travel, the defendant had the intent to engage in a sexual act, as that term is defined in this instruction, with an individual under the age of eighteen (18);

Third: That if the sexual act had occurred, it would have violated federal law; and

Fourth: That the defendant acted knowingly and willfully.

Under federal law, it is crime or for anyone to engage in a sexual act with a person believed by him to be at least twelve (12) and less than sixteen (16) years of age and who is at least four (4) years younger than the defendant.

As used in this instruction, “sexual act” includes: (a) contact between the penis and vulva. Contact involving the penis occurs upon penetration, however slight; (b) contact between the mouth and the penis, or the mouth and vulva; (c) penetration, however slight, of the genital opening of another by a hand or finger or by any object, with an intent to arouse or gratify the sexual desire of any person; or (d) intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of sixteen (16) years with an intent to or arouse or gratify the sexual desire of any person.

It is not necessary for the United States to prove that the individual actually existed or was in fact at least twelve (12) and less than sixteen (16) years of age. But it is necessary for the United States to prove that the defendant believed such individual to be at least twelve (12) and less than sixteen (16) years of age.

You will note that the indictment charges that the offense was committed "on or about" a certain date. The United States does not have to prove with certainty the exact date of the alleged offense. It is sufficient if the United States proves beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

The word "knowingly," as that term has been used in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

The word "willfully," as that term has been used in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids.

A separate crime or offense is charged in each count of the indictment. Each charge and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not affect your verdict as to any other offense charged.

The defendant is on trial only for those specific offenses alleged in the indictment. Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted the matter of punishment is for the judge to determine.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will not have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience.

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your foreperson fill in the verdict form, date and sign it, and then return to the courtroom.