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**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 07-30024-01-KES

vs.

WILLIAM WAYNE ZIEGLER, SR.,

Defendant.

**FINAL
INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

FINAL INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

At the beginning of the trial I told you that the defendant was accused of seven different crimes. Since the trial started, however, one of those charges has been disposed of, the one having to do with allegations of incest of ██████████ ██████████, as contained in Count 5. This charge is no longer before you, and only the crimes that the defendant is charged with now are explained within these final instructions. You should not guess about or concern yourselves with the reason for this disposition. You are not to consider this fact when deciding if the government has proved, beyond a reasonable doubt, the counts which remain.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 - COUNT 1 - AGGRAVATED SEXUAL ABUSE

Count 1 of the indictment charges that, on or about between January 1, 1995, and January 31, 1995, in Lower Brule, in Indian Country, in the District of South Dakota, the defendant, William Wayne Ziegler, Sr., an Indian, did knowingly cause [REDACTED], a child who had not attained the age of 12 years, to engage in and attempt to engage, in a sexual act, that is, the intentional touching, not through the clothing, of [REDACTED] genitalia, with the intent to abuse, humiliate, harass, and degrade [REDACTED] and to arouse and gratify the sexual desire of William Wayne Ziegler, Sr.

Elements

For you to find the defendant guilty of the “aggravated sexual abuse” offense charged in **Count 1** of the indictment, the government must prove the following four essential elements beyond a reasonable doubt as to the defendant:

One, that on or about between January 1, 1995, and January 31, 1995, defendant knowingly engaged, or attempted to engage, in a sexual act with [REDACTED];

An act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake, or accident. You may consider evidence of defendant’s acts and words, along with all the evidence, in deciding whether defendant acted knowingly.

The term “sexual act” as used within this instruction means the intentional touching, not through the clothing, of [REDACTED] genitalia, with an intent to abuse, humiliate, harass, or degrade [REDACTED], or arouse or gratify the sexual desire of the defendant.

A person may be found guilty of an "attempt" if he intended to commit a 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. You must all agree as to what constituted the substantial step.

Two, that on the date you find any alleged offense to have been committed, [REDACTED] had not reached the age of twelve years; and

Three and four, that the defendant is an Indian, and that the offense took place in Indian country, namely at Lower Brule, South Dakota.

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that the place where the alleged incident occurred, at Lower Brule, is in Indian country.

The defendant has not, by entering into this agreement or stipulation, admitted his guilt of the offense charged, and you may not draw any inference of guilt from the stipulation. The only effect of this stipulation is to present to the jury the facts that the defendant is an Indian and that if the jury finds that the alleged incident occurred, it occurred in Indian country.

For you to find the defendant guilty of aggravated sexual abuse as charged in **Count 1** of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

Lesser Included Offense - Abusive Sexual Contact of a Child

If your verdict under this instruction is not guilty of aggravated sexual abuse, or if after all reasonable efforts you are unable to reach a verdict on Count 1 of the indictment, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of abusive sexual contact of a child. The crime of abusive sexual contact of a child, a lesser included offense of the crime charged in Count 1 of the indictment, has the following four essential elements:

One, that on or about between January 1, 1995, and January 31, 1995, defendant knowingly engaged in sexual contact with [REDACTED];

The term “knowingly” was explained previously within this instruction.

The term “sexual contact” as used within this instruction means the intentional touching, either directly or through the clothing, of [REDACTED] genitalia, groin, or inner thigh with an intent to abuse, humiliate, harass, or degrade [REDACTED] or arouse or gratify the sexual desire of the defendant.

Two, that on the date you find any alleged offense to have been committed, [REDACTED] had not reached the age of twelve years; and

Three and four, that the defendant is an Indian and that the offense took place in Indian Country, namely at Lower Brule, South Dakota.

For you to find the defendant guilty of the crime of abusive sexual contact of a child, the government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

Lesser Included Offense - Simple Assault

If your verdict as to Count 1 under this instruction is not guilty of aggravated sexual abuse, or if after all reasonable efforts, you are unable to reach a verdict on Count 1 of the indictment, and your verdict under this instruction is not guilty of abusive sexual contact of a child, or if, after all reasonable efforts, you are unable to reach a verdict on the offense of abusive sexual contact of a child, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of simple assault. The crime of simple assault, a lesser included offense of the crime charged in Count 1 of the indictment, has the following three essential elements:

One, that on or about between January 1, 1995, and January 31, 1995, defendant assaulted [REDACTED]; and

An "assault" is any intentional and voluntary attempt or threat to do injury to the person of another, when coupled with the apparent present ability to do so sufficiently to put the person against whom the attempt is made in fear of immediate bodily harm.

Two and three, that the defendant is an Indian and that the offense took place in Indian Country, namely at Lower Brule, South Dakota.

FINAL INSTRUCTION NO. 3 - COUNT 2 - SEXUAL ABUSE OF A MINOR

Count 2 of the indictment charges that, on or about between October 15, 1995, and October 14, 1997, in Lower Brule, in Indian Country, in the District of South Dakota, the defendant, William Wayne Ziegler, Sr., an Indian, did knowingly cause and attempt to cause [REDACTED], a minor who had attained the age of 12 years, but had not attained the age of 16 years, and was at least four years younger than William Wayne Ziegler, Sr., to engage in a sexual act, that is, contact between her mouth and his penis.

Elements

For you to find the defendant guilty of the “sexual abuse of a minor” offense charged in **Count 2** of the indictment, the government must prove the following five essential elements beyond a reasonable doubt as to the defendant:

One, that on or about between October 15, 1995, and October 14, 1997, defendant knowingly attempted to engage in a sexual act with [REDACTED];

The terms “knowingly” and “attempt” were defined for you in Final Instruction Number 2.

The term “sexual act” as used within this instruction means contact between the mouth and the penis.

Two, that on the date you find any alleged offense to have been committed, [REDACTED] had attained the age of 12 years, but had not attained the age of 16 years;

Three, that [REDACTED] was at least four years younger than defendant; and

Four and five, that the defendant is an Indian, and that the offense took place in Indian country, namely at Lower Brule, South Dakota.

As noted in Final Instruction Number 2, counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that the place where the alleged incident occurred, at Lower Brule, is in Indian country.

For you to find the defendant guilty of sexual abuse of a minor as charged in **Count 2** of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

Lesser Included Offense - Abusive Sexual Contact of a Minor

If your verdict under this instruction is not guilty of sexual abuse of a minor, or if after all reasonable efforts, you are unable to reach a verdict on Count 2 of the indictment, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of abusive sexual contact of a minor. The crime of abusive sexual contact of a minor, a lesser included offense of the crime charged in Count 2 of the indictment, has the following five essential elements:

One, that on or about between October 15, 1995, and October 14, 1997, defendant knowingly engaged in sexual contact with [REDACTED], [REDACTED];

The term “knowingly” was defined for you in Final Instruction Number 2.

The term “sexual contact” as used within this instruction means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, inner thigh, or buttocks with an intent to abuse, humiliate, harass, or degrade [REDACTED], or arouse or gratify the sexual desire of the defendant.

Two, that on the date you find any alleged offense to have been committed, [REDACTED] had attained the age of 12 years, but had not attained the age of 16 years;

Three, that [REDACTED] was at least four years younger than the defendant; and

Four and Five, that the defendant is an Indian, and that the offense took place in Indian country, namely at Lower Brule, South Dakota.

For you to find the defendant guilty of the crime of abusive sexual contact of a minor, the government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

FINAL INSTRUCTION NO. 4 - COUNT 3 - ABUSIVE SEXUAL CONTACT OF A
MINOR

Count 3 of the indictment charges that, on or about between October 15, 1995, and October 14, 1997, in Lower Brule, in Indian Country, in the District of South Dakota, the defendant, William Wayne Ziegler, Sr., an Indian, did knowingly cause and attempt to cause, [REDACTED], a minor who had attained the age of 12 years, but had not attained the age of 16 years, and was at least four years younger than William Wayne Ziegler, Sr., to engage in sexual contact, that is, the intentional touching, either directly or through the clothing, of her genitalia, groin, breast, inner thigh, and buttocks, with the intent to abuse, humiliate, harass, and degrade [REDACTED], and to arouse and gratify the sexual desire of William Wayne Ziegler, Sr.

Elements

For you to find the defendant guilty of the “abusive sexual contact of a minor” offense charged in **Count 3** of the indictment, the government must prove the following five essential elements beyond a reasonable doubt as to the defendant:

One, that on or about between October 15, 1995, and October 14, 1997, defendant knowingly engaged, or attempted to engage, in sexual contact with [REDACTED];

The terms “knowingly” and “attempt” were defined for you in Final Instruction Number 2.

The term “sexual contact” as used within this instruction means the intentional touching, either directly or through the clothing, of the breast of [REDACTED] with an intent to abuse, humiliate, harass, or degrade [REDACTED], or arouse or gratify the sexual desire of the defendant.

Two, that on the date you find any alleged offense to have been committed, [REDACTED] had attained the age of 12 years, but had not attained the age of 16 years;

Three, that [REDACTED] was at least four years younger than the defendant; and

Four and five, that the defendant is an Indian; and that the offense took place in Indian country, namely at Lower Brule, South Dakota.

As noted in Final Instruction Number 2, counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that the place where the alleged incident occurred, at Lower Brule, is in Indian country.

For you to find the defendant guilty of abusive sexual contact of a minor as charged in **Count 3** of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

FINAL INSTRUCTION NO. 5 - COUNT 4 - ABUSIVE SEXUAL CONTACT OF A
MINOR

Count 4 of the indictment charges that, on or about between October 15, 1995, and October 14, 1997, in Lower Brule, in Indian Country, in the District of South Dakota, the defendant, William Wayne Ziegler, Sr., an Indian, did knowingly cause and attempt to cause, [REDACTED], a minor who had attained the age of 12 years, but had not attained the age of 16 years, and was at least four years younger than William Wayne Ziegler, Sr., to engage in sexual contact, that is, the intentional touching, either directly or through the clothing, of his penis with her hand, with the intent to abuse, humiliate, harass, and degrade [REDACTED], and to arouse and gratify the sexual desire of William Wayne Ziegler, Sr.

Elements

For you to find the defendant guilty of the “abusive sexual contact of a minor” offense charged in **Count 4** of the indictment, the government must prove the following five essential elements beyond a reasonable doubt as to the defendant:

One, that on or about between October 15, 1995, and October 14, 1997, defendant knowingly engaged, or attempted to engage, in sexual contact with [REDACTED]

The terms “knowingly” and “attempt” were defined for you in Final Instruction Number 2.

The term “sexual contact” as used within this instruction means the intentional touching, either directly or through the clothing, of the genitalia of the defendant by [REDACTED] hand, with an intent to abuse, humiliate, harass, or degrade [REDACTED], or arouse or gratify the sexual desire of the defendant.

Two, that on the date you find any alleged offense to have been committed, [REDACTED] had attained the age of 12 years, but had not attained the age of 16 years;

Three, that [REDACTED] was at least four years younger than the defendant; and

Four and five, that the defendant is an Indian; and that the offense took place in Indian country, namely at Lower Brule, South Dakota.

As noted in Final Instruction Number 2, counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that the place where the alleged incident occurred, at Lower Brule, is in Indian country.

For you to find the defendant guilty of abusive sexual contact of a minor as charged in **Count 4** of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

FINAL INSTRUCTION NO. 6 - COUNT 6 - SEXUAL ABUSE OF A MINOR

Count 6 of the indictment charges that, on or about between May 1, 2003, and August 31, 2003, in Lower Brule, in Indian Country, in the District of South Dakota, the defendant, William Wayne Ziegler, Sr., an Indian, did knowingly engage and attempt to engage, in a sexual act with [REDACTED] a minor who had attained the age of 12 years, but had not attained the age of 16 years, and was at least four years younger than William Wayne Ziegler, Sr., that is, penetration of her genital opening with his fingers and hand, with the intent to abuse, humiliate, harass, and degrade [REDACTED] and to arouse and gratify the sexual desire of William Wayne Ziegler, Sr.

Elements

For you to find the defendant guilty of the “sexual abuse of a minor” offense charged in **Count 6** of the indictment, the government must prove the following five essential elements beyond a reasonable doubt as to the defendant:

One, that on or about between May 1, 2003, and August 31, 2003, defendant knowingly engaged, or attempted to engage, in a sexual act with [REDACTED]

The terms “knowingly” and “attempt” were defined for you in Final Instruction Number 2.

The term “sexual act” as used within this instruction means the intentional touching, not through the clothing, of the genitalia of [REDACTED] with an intent to abuse, humiliate, harass, or degrade [REDACTED], or arouse or gratify the sexual desire of the defendant.

Two, that on the date you find any alleged offense to have been committed, [REDACTED] had attained the age of 12 years, but had not attained the age of 16 years;

Three, that [REDACTED] was at least four years younger than the defendant; and

Four and five, that the defendant is an Indian; and that the offense took place in Indian country, namely at Lower Brule, South Dakota.

As noted in Final Instruction Number 2, counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that the place where the alleged incident occurred, at Lower Brule, is in Indian country.

For you to find the defendant guilty of sexual abuse of a minor as charged in **Count 6** of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

Lesser Included Offense - Abusive Sexual Contact of a Minor

If your verdict under this instruction is not guilty of sexual abuse of a minor, or if after all reasonable efforts, you are unable to reach a verdict on Count 6 of the indictment, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of abusive sexual contact of a minor. The crime of abusive sexual contact of a minor, a lesser included offense of the crime charged in Count 6 of the indictment, has the following five essential elements:

One, that on or about between May 1, 2003, and August 31, 2003, defendant knowingly engaged in sexual contact with [REDACTED];

The term “knowingly” was defined in Final Instruction Number 2

The term “sexual contact” as used within this instruction means the intentional touching, either directly or through the clothing, of the genitalia, groin, buttocks, or inner thigh of [REDACTED] with an intent to abuse, humiliate, harass, or degrade [REDACTED], or arouse or gratify the sexual desire of the defendant.

Two, that on the date you find any alleged offense to have been committed, [REDACTED] had attained the age of 12 years, but had not attained the age of 16 years;

Three, that [REDACTED] was at least four years younger than defendant; and

Four and Five, that the defendant is an Indian; and that the offense took place in Indian country, namely at Lower Brule, South Dakota.

For you to find the defendant guilty of the crime of abusive sexual contact of a minor, the government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

Lesser Included Offense - Simple Assault

If your verdict under this instruction is not guilty of sexual abuse of a minor, or if, after all reasonable efforts, you are unable to reach a verdict on Count 6 of the indictment, and your verdict under this instruction is not guilty of the lesser included offense of abusive sexual contact of a minor, or if, after all reasonable efforts you are unable to reach a verdict on the offense of abusive sexual contact of a minor, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime

of simple assault. The crime of simple assault, a lesser included offense of the crime charged in Count 6 of the indictment, has the following three essential elements:

One, that on or about between May 1, 2003, and August 31, 2003, defendant assaulted [REDACTED]; and

The term "assault" was defined for you in Final Instruction Number 2.

Two and three, that the defendant is an Indian; and that the offense took place in Indian country, namely at Lower Brule, South Dakota.

For you to find the defendant guilty of the crime of simple assault, the government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

FINAL INSTRUCTION NO. 7 - COUNT 7 - INCEST

Count 7 of the indictment charges that, on or about between May 1, 2003, and August 31, 2003, in Lower Brule, in Indian Country, in the District of South Dakota, the defendant, William Wayne Ziegler, Sr., an Indian male who was over the age of 14, did engage in sexual contact, that is, touching of the breasts, genitalia, and anus of his granddaughter, [REDACTED], who was under the age of 21, and a female not the lawful wife of William Wayne Ziegler, Sr., and a person who was within the degrees of consanguinity within which marriages are void.

Elements

For you to find the defendant guilty of the “incest” offense charged in **Count 7** of the indictment, the government must prove the following seven essential elements beyond a reasonable doubt as to the defendant:

One, that the defendant knowingly engaged in sexual contact with

[REDACTED];

The term “knowingly” was defined for you in Final Instruction Number 2.

The term “sexual contact” for purposes of this instruction means any touching, not amounting to rape, whether or not through the clothing or other covering, of the breasts, genitalia or anus of [REDACTED] with the intent to arouse or gratify the sexual desire of the defendant.

Two, that on the date you find any alleged offense to have been committed, the defendant was fourteen years of age or older;

Three, that the defendant and [REDACTED] were not married at the time of any alleged sexual contact;

Four, that on the date you find any alleged offense to have been committed [REDACTED] was under the age of twenty-one years;

Five, that the defendant and [REDACTED] are within the degrees of consanguinity or affinity within which marriages are by the laws of the state of South Dakota declared void; and

Under South Dakota law, marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews are declared null and void from the beginning. This includes relationships that arise through adoption. The term ancestors includes grandfathers.

Six and Seven, that the defendant is an Indian; and that the offense took place in Indian Country, namely, Lower Brule, South Dakota.

As noted in Final Instruction Number 2, counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the defendant is an Indian and that the place where the alleged incident occurred, at Lower Brule, is in Indian country.

For you to find the defendant guilty of the crime of incest, the government must prove all of these essential elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

FINAL INSTRUCTION NO. 8 - PROOF OF INTENT OR KNOWLEDGE

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 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.

FINAL INSTRUCTION NO. 9 - MULTIPLE ALLEGED OFFENSES

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

FINAL INSTRUCTION NO. 10 - CHARACTER AND REPUTATION

You have heard testimony about the character and reputation of William Wayne Ziegler, Sr., [REDACTED], and Teri Lyn Johnson for truthfulness. You may consider this evidence only in deciding whether to believe the testimony of William Wayne Ziegler, Sr., [REDACTED], and Teri Lyn Johnson, and how much weight to give to it.

FINAL INSTRUCTION NO. 11 - UNCHARGED ALLEGATIONS

You have heard evidence that the defendant allegedly attempted or did have sexual contact with other persons not named in the indictment. If you believe this evidence, this does not mean that defendant is guilty of any of the charges to which he has pled not guilty in this case which you will be deciding. You may give such evidence no weight or such weight as you think it is entitled to receive. This evidence is received for a limited purpose only.

FINAL INSTRUCTION NO. 12 - IMPEACHMENT

In Preliminary Instruction No. 7, 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 may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight you think it deserves.

FINAL INSTRUCTION NO. 13 - PRESUMPTION OF INNOCENCE AND BURDEN
OF PROOF

William Wayne Ziegler, Sr., is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with Mr. Ziegler throughout the trial. That presumption alone is sufficient to find him not guilty. The presumption of innocence may be overcome as to Mr. Ziegler only if the prosecution proves, beyond a reasonable doubt, each element of the crime charged against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the 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. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution.

Unless the prosecution proves beyond a reasonable doubt that William Wayne Ziegler, Sr. committed each and every element of the offense charged in the indictment against him, you must find him not guilty of that offense.

FINAL INSTRUCTION NO. 14 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence or lack of evidence produced by the prosecution. 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 in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

FINAL INSTRUCTION NO. 15 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. Your verdict as to the defendant must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on the offense charged against him, then the defendant should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on the offense charged, then your vote should be for a verdict of guilty against the defendant on that charge, and if all of you reach that conclusion, then the verdict of the jury must be guilty for the defendant on that charge. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of a crime charged.

Remember also that the question before you can never be whether the government wins or loses the case. The government, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

FINAL INSTRUCTION NO. 16 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

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.

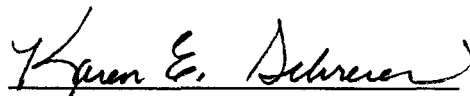
Second, if the defendant is guilty, the sentence to be imposed is my responsibility. You may not consider the punishment of William Wayne Ziegler, Sr. in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

Third, 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.**

Fourth, your verdict must be based solely on the evidence and on the law in these instructions. **The verdict, whether not guilty or guilty, must be unanimous.** 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.

Dated May 23, 2008.



Karen E. Schreier
Chief Judge