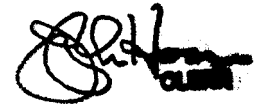


**FILED**

JUN 30 2009



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

UNITED STATES OF AMERICA,  
Plaintiff,

No. CR 08-30028-01-KES

vs.

**FINAL  
INSTRUCTIONS  
TO THE JURY**

WAYNE L. NELSON,  
Defendant.

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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.

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 –  
FAILURE TO PAY CHILD SUPPORT

The superseding indictment charges that from on or about August 1, 2005, and continuing to the present, in Hughes County, in the District of South Dakota, defendant, Wayne L. Nelson, while residing in a different state with respect to his minor child, who resides in South Dakota, willfully and unlawfully failed to pay a past due support obligation, as ordered by the Family Court of the State of New York, Westchester at White Plains, New York, and by the Family Court of the State of New York, County of Suffolk, and which obligation has remained unpaid for a period of longer than two years and is in an amount greater than \$10,000.

***Elements***

For you to find Wayne Nelson guilty of the offense charged in the superseding indictment, the prosecution must prove the following six essential elements beyond a reasonable doubt:

***One, that Wayne Nelson has a child residing in the State of South Dakota;***

***Two, that Wayne Nelson resides in a state other than South Dakota;***

***Three, that there exists a court order, or an order of an administrative process pursuant to state law, which obligates Wayne Nelson to pay a certain amount for the support and maintenance of his child residing in South Dakota;***

***Four, from on or about August 1, 2005, and continuing to the present, the defendant has failed to pay this support obligation;***

***Five, that the unpaid support obligation has remained unpaid for a period longer than two years, or is greater than \$10,000;***

***And six, that Wayne Nelson's failure to pay the support obligation was willful and unlawful.***

In order for you to find that any failure by the defendant to pay a support obligation was a willful failure, you must find that the defendant voluntarily and intentionally failed to pay the support obligation with the purpose of violating a known legal duty, and you must find that, at the time the defendant failed to pay a support obligation, he had the ability to pay some amount toward the support obligation.

For you to find the defendant guilty of failure to pay child support, as charged in the superseding indictment, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find him not guilty.

FINAL INSTRUCTION NO. 3 – REBUTTABLE PRESUMPTION

The existence of a support obligation that was in effect for the time period charged in the superseding indictment creates a rebuttable presumption that Wayne Nelson has the ability to pay the support obligation for that time period. A rebuttable presumption refers to a fact that may be assumed in the absence of evidence to the contrary. The defendant may rebut this presumption, however, by presenting evidence to you showing that he did not have the ability to pay some amount toward the support obligation.

**FINAL INSTRUCTION NO. 4 – GOOD FAITH BELIEF**

One of the issues in this case is whether Wayne Nelson acted in good faith. Good faith is a complete defense to the charge of failure to pay a legal child support obligation if it is inconsistent with “willfulness,” which is an essential element of the charge.

Evidence that Wayne Nelson acted in good faith may be considered by you, together with all the other evidence in determining whether or not he acted willfully.

FINAL INSTRUCTION NO. 5 –  
PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

Wayne Nelson 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 the defendant throughout the trial. That presumption alone is sufficient to find the defendant not guilty. The presumption of innocence may be overcome only if the prosecution proves, beyond a reasonable doubt, each element of a 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 Wayne Nelson has committed each and every element of the offense charged in the superseding indictment against him, you must find him not guilty of that offense.

FINAL INSTRUCTION NO. 6 – 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. 7 – 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 an 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 an 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.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

FINAL INSTRUCTION NO. 8 – 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.

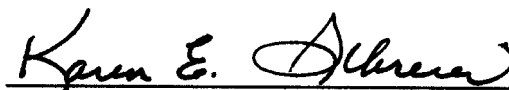
*Second*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

*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 June 30, 2009.



Karen E. Schreier  
Chief Judge

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WAYNE L. NELSON,

Defendant.

No. CR 08-30028-01-KES

**VERDICT**

We, the Jury, unanimously find the defendant, Wayne L. Nelson, not guilty or guilty as follows:

<b>FAILURE TO PAY CHILD SUPPORT</b>	<b>VERDICT</b>
On the charge of "failure to pay child support," please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson