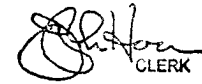


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED

JUL - 1 2009


CLERK

UNITED STATES OF AMERICA,
Plaintiff,

No. CR 08-30101-01-KES

vs.

**FINAL
INSTRUCTIONS
TO THE JURY**

HAROLD GEORGE VOICE,
Defendant.

TABLE OF CONTENTS

FINAL INSTRUCTIONS

NO. 1 - INTRODUCTION	1
NO. 2 - "KNOWLEDGE"	2
NO. 3 - FAILURE TO REGISTER AS A SEX OFFENDER	3
NO. 4 - THEORY OF DEFENSE	5
NO. 5 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF	6
NO. 6 - REASONABLE DOUBT	7
NO. 7 - PRIOR CONVICTION	8
NO. 8 - DUTY TO DELIBERATE	9
NO. 9 - DUTY DURING DELIBERATIONS	11

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 – “KNOWLEDGE”

“Knowledge” is an element of the offense charged in this case and must be proved beyond a reasonable doubt. The prosecution is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done “knowingly” if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the defendant’s words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

FINAL INSTRUCTION NO. 3 –
FAILURE TO REGISTER AS A SEX OFFENDER

The indictment charges that between on or about the 5th day of August, 2008, and the 2nd day of October, 2008, in the District of South Dakota, the defendant, Harold Voice, a person required to register under the Sex Offender Registration and Notification Act, and a sex offender by reason of a conviction under Federal law, did knowingly fail to register and update a registration.

Elements

For you to find Harold Voice guilty of the offense charged in the indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, that Harold Voice is required to register under the Sex Offender Registration and Notification Act;

The Sex Offender Registration and Notification Act provides that a sex offender shall register, and keep his registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student.

The term “sex offender” means an individual who was convicted of a sex offense. A “sex offense” includes (1) a criminal offense that has an element involving a sexual act or sexual contact with another; (2) a criminal offense that is a specified offense against a minor; and (3) a federal offense under section 1591, or chapter 109A, 110, or 117, of Title 18.

A “criminal offense” means a state, local, tribal, foreign, or military offense or other criminal offense.

The term “resides” means the location of the individual’s home or other place where the individual habitually lives.

Two, that Harold Voice is a sex offender by reason of a conviction under federal law;

Three, that between on or about August 5, 2008, and October 2, 2008, Harold Voice knowingly failed to register or update a registration as required under the Sex Offender Registration and Notification Act;

To update a registration, a sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in the pertinent jurisdiction and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry.

and Four, that an affirmative defense does not apply.

It is an affirmative defense if:

- (1) uncontrollable circumstances prevented the defendant from complying;
- (2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and
- (3) the individual complied as soon as such circumstances ceased to exist.

If all of these elements of the crime have been proved beyond a reasonable doubt, and if it has further been proved beyond a reasonable doubt that the affirmative defense does not apply, then you must find Harold Voice guilty of the crime charged; otherwise you must find Harold Voice not guilty of this crime.

FINAL INSTRUCTION NO. 4 – THEORY OF DEFENSE

It is the defendant's position that he is not guilty of the crime alleged against him in the indictment. Harold Voice asserts that he is not guilty because he did not reside on the Crow Creek reservation as that term has been defined for you in these instructions.

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

Harold Voice 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. Therefore, the fact that the defendant did not testify must not be discussed or considered by you in any way when deliberating and arriving at your verdict. 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 Harold Voice has 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. 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 – PRIOR CONVICTION

You have received evidence that the defendant is a sex offender because he has been convicted of a sex offense. This evidence is necessary and proper because, as you have been instructed, being convicted of such a crime is an element of the offense with which the defendant has been charged.

However, while proof of a prior conviction of such a crime is necessary and proper, you should not conclude that because the defendant may have committed a crime in the past he committed the offense with which he is currently charged. Nor should you conclude that any prior conviction shows general bad character or a likelihood that the defendant would commit future crimes.

As I have instructed, the defendant is presumed innocent until proven guilty of the current charges. Therefore, you should consider evidence of the defendant's prior convictions only to determine whether the Government has proven this element of the offense beyond a reasonable doubt.

FINAL INSTRUCTION NO. 8 – 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. 9 – 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.

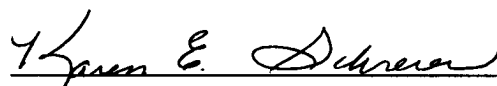
Second, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

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 July 1, 2009.



Karen E. Schreier
Chief Judge

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

UNITED STATES OF AMERICA,
Plaintiff,

No. CR 08-30101-01-KES

vs.

VERDICT

HAROLD GEORGE VOICE,
Defendant.

We, the Jury, unanimously find the defendant, Harold George Voice, not guilty or guilty as follows:

FAILURE TO REGISTER AS A SEX OFFENDER	VERDICT
On the charge of "failure to register as a sex offender," please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

Date

Foreperson