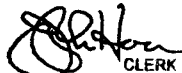


FILED

APR 05 2013


CLERK

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

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 12-40017-01-KES

vs.

EMMANUEL WILLIAM NYUON
a/k/a "KC,"

Defendant.

**FINAL
INSTRUCTIONS
TO THE JURY**

TABLE OF CONTENTS

FINAL INSTRUCTIONS

NO. 1 – INTRODUCTION	1
NO. 2 – COUNT 1: SEX TRAFFICKING OF A CHILD	2
NO. 3 – COUNT 2: CONSPIRACY TO ENGAGE IN SEX TRAFFICKING OF A CHILD	6
NO. 4 – IMPEACHMENT	9
NO. 5 – DEFENDANT’S PRIOR SIMILAR ACTS	11
NO. 6 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF ..	12
NO. 7 – REASONABLE DOUBT	13
NO. 8 – DUTY TO DELIBERATE	14
NO. 9 – DUTY DURING DELIBERATIONS	16

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 – COUNT 1: SEX TRAFFICKING OF A CHILD

Count 1 of the Second Superseding Indictment charges Nyuon with “sex trafficking of a child.” For you to find Nyuon guilty of **Count 1** in the Second Superseding Indictment, the prosecution must prove beyond a reasonable doubt *all* of the following three essential elements:

One, that beginning on or about September 1, 2011, and continuing through on or about January 25, 2012,

- (a) **Nyuon knowingly recruited, enticed, harbored, transported, provided, or obtained by any means, S.J.; or**
- (b) **Nyuon knowingly benefitted, financially or by receiving anything of value, from participation in a venture engaged in sex trafficking;**

It is not necessary that the Government prove, beyond a reasonable doubt, both One(a) and One(b). It is sufficient if the Government proves beyond a reasonable doubt, either One(a) or One(b); but in that event, in order to return a verdict of guilty, you must unanimously agree upon whether the Government proved beyond a reasonable doubt One(a) or One(b).

The term “venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

Two, that Nyuon did so knowing or in reckless disregard of the fact that:

- (a) **S.J. had not attained the age of 18 years and would be caused to engage in a commercial sex act; or**
- (b) **means of force, threats of force, fraud, coercion, or any combination of such means would be used to cause S.J. to engage in a commercial sex act;**

It is not necessary that the Government prove, beyond a reasonable doubt, both Two(a) and Two(b). It is sufficient if the Government proves beyond a reasonable doubt, either Two(a) or Two(b); but in that event, in order to return a verdict of guilty, you must unanimously agree upon whether the Government proved beyond a reasonable doubt Two(a) or Two(b).

The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.

If the Government proves beyond a reasonable doubt that Nyuon had a reasonable opportunity to observe S.J., then the Government does not have to prove that Nyuon knew that S.J. had not attained the age of 18 years.

Whether S.J. consented to engage in a commercial sex act, or otherwise voluntarily participated, is not relevant, because the consent or voluntary participation of a minor is not a defense to this charge.

Any contention that S.J. engaged in acts of prostitution before or after her encounters with Nyuon is not relevant, and should not be considered by you in any way.

A person “recklessly disregards” a fact within the meaning of this offense when he is aware of, but consciously or carelessly ignores facts and circumstances that would reveal the fact that means of force, threats of force, fraud, or coercion, or any combination of such means would be used to cause S.J. to engage in a commercial sex act.

The term “coercion” means:

- (A) threats of serious harm to or physical restraint against any person; or
- (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act

would result in serious harm to or physical restraint against any person.

The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

And three, that Nyuon’s actions were in or affecting interstate commerce.

The term “commerce” includes, among other things, travel, trade, transportation, and communication. The internet is an instrumentality and channel of interstate commerce.

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

In **Count 1** of the Second Superseding Indictment, Nyuon is also charged with aiding and abetting sex trafficking of a child. Nyuon may also be found guilty of sex trafficking of S.J. even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of sex trafficking of S.J. In order to have aided and abetted the commission of a crime, Nyuon must:

- (1) have known sex trafficking of S.J. was being committed or going to be committed,
- (2) have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of sex trafficking of S.J., and
- (3) have done so knowing or in reckless disregard of the fact that S.J. had not attained the age of 18 years and would be

caused to engage in a commercial sex act or that means of force, threats of force, fraud, coercion, or any combination of such means would be used to cause S.J. to engage in a commercial sex act.

For you to find Nyuon guilty of sex trafficking of S.J. by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of sex trafficking of a child were committed by some person or persons and that Nyuon aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

For you to find Nyuon guilty of sex trafficking of S.J. or aiding and abetting sex trafficking of S.J., as charged in the Second Superseding Indictment, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find Nyuon not guilty of **Count 1**.

FINAL INSTRUCTION NO. 3 – COUNT 2: CONSPIRACY TO ENGAGE IN SEX TRAFFICKING OF A CHILD

Count 2 of the Second Superseding Indictment charges Nyuon with “conspiracy to engage in sex trafficking of a child.” For you to find Nyuon guilty of **Count 2** of the Second Superseding Indictment, the prosecution must prove beyond a reasonable doubt *all* of the following three essential elements:

One, that beginning on or about September 1, 2011, and continuing through on or about January 25, 2012, two or more persons reached an agreement or understanding to engage in sex trafficking of a child;

A conspiracy is an agreement of two or more persons to commit one or more crimes. For this element to be proved,

- Nyuon may have been, but did not have to be, one of the original conspirators
- The crime that the conspirators agreed to commit did not actually have to be committed
- The agreement did not have to be written or formal
- The agreement did not have to involve every detail of the conspiracy

Here, the conspirators allegedly agreed to commit the crime of “sex trafficking of a child.” To help you decide whether or not the conspirators agreed to commit that crime, you should consider the elements of that crime. The elements of “sex trafficking of a child” are the following:

- *One*, a defendant,
 - (a) knowingly recruited, enticed, harbored, transported, provided, or obtained by any means, a person; or
 - (b) knowingly benefitted, financially or by receiving anything of value, from participation in a venture engaged in sex trafficking;

- *Two*, that a defendant did so knowing or in reckless disregard of the fact that:
 - (a) the person had not attained the age of 18 years and would be caused to engage in a commercial sex act; or
 - (b) means of force, threats of force, fraud, coercion, or any combination of such means would be used to cause the person to engage in a commercial sex act.
- *And three*, that a defendant's actions were in or affecting interstate commerce.

Remember that the prosecution does not have to prove that sex trafficking of a child actually occurred for this element of the "conspiracy to engage in sex trafficking of a child" offense to be proved.

Two, that Nyuon voluntarily and intentionally joined in the agreement or understanding;

Nyuon must have joined in the agreement, but he may have done so at any time during its existence. Nyuon may have joined the agreement even if he agreed to play only a minor role in it.

Nyuon did not have to do any of the following to join the agreement:

- join the agreement at the same time as all the other conspirators
- know all of the details of the conspiracy, such as the names, identities, or locations of all the other members, or
- conspire with every other member of the conspiracy

On the other hand, each of the following, alone, is not enough to show that Nyuon joined the agreement:

- evidence that a person was merely present at the scene of an event

- evidence that a person merely acted in the same way as others
- evidence that a person merely associated with others
- evidence that a person was friends with or met socially with individuals involved in the conspiracy
- evidence that a person who had no knowledge of a conspiracy acted in a way that advanced an objective of the conspiracy
- evidence that a person merely knew of the existence of a conspiracy
- evidence that a person merely knew that an objective of the conspiracy was being considered or attempted, or
- evidence that a person merely approved of the objectives of the conspiracy

Rather, the prosecution must prove that Nyuon had some degree of knowing involvement in the conspiracy.

And three, that at the time Nyuon joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

Without knowledge of the purpose of the conspiracy, Nyuon cannot be guilty of the conspiracy offense, even if his acts furthered the conspiracy. The prosecution does not have to prove that Nyuon knew that what he did was unlawful. In other words, Nyuon must have known that the purpose of the conspiracy was to engage in sex trafficking of a child, but did not have to know that conspiring to commit that offense was illegal.

For you to find Nyuon guilty of conspiracy to engage in sex trafficking of a child, as charged in the Second Superseding Indictment, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find Nyuon not guilty of **Count 2**.

FINAL INSTRUCTION NO. 4 – IMPEACHMENT

In Preliminary Instruction No. 6, 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. If you conclude that any witness has willfully sworn falsely to any material fact in issue, you may disregard the whole or any part of such witness’s testimony.

You have heard that a witness was convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give his or her testimony.

You have heard testimony from witnesses that stated that they participated in the crimes charged against the defendant. 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 their desire to please the Government or to strike

a good bargain with the Government about their own situation is for you to determine.

FINAL INSTRUCTION NO. 5 – DEFENDANT’S PRIOR SIMILAR ACTS

You have heard evidence that Nyuon may have arranged prostitution acts for witnesses T.F. and N.T. You may consider this evidence only if you unanimously find it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable. This is a lower standard than proof beyond a reasonable doubt.

If you find that this evidence has been proved, then you may consider it to help you decide Nyuon’s intent, preparation, plan, and absence of mistake or accident to commit sex trafficking of a child against S.J. You should give it the weight and value you believe it is entitled to receive. If you find that this evidence has not been proved, you must disregard it.

Remember, even if you find that Nyuon may have committed a similar act in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. Nyuon is on trial only for the crimes charged, and you may consider the evidence of prior acts only on the issues stated above.

FINAL INSTRUCTION NO. 6 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of an offense charged against him.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict
- This burden means that you must find the defendant not guilty of an offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 7 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 8 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.

- You must consider all of the evidence bearing on each element before you.
- Take all the time that you feel is necessary.
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 9 – DUTY DURING DELIBERATIONS

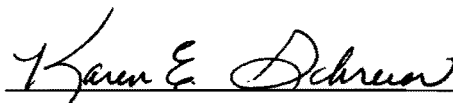
You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty, I will decide what his sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.

- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated April 5, 2013.

A handwritten signature in cursive script, reading "Karen E. Schreier", is written above a solid horizontal line.

Karen E. Schreier
United States District Judge