

**FILED**

JUN 26 2014

*[Signature]*  
CLERK

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

UNITED STATES OF AMERICA,  
  
Plaintiff,

No. CR 13-40072-01-KES

vs.

VERONICA J. FAIRCHILD,  
  
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.

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 – COUNTS 1–4: MAKING AND SUBSCRIBING  
TO A FALSE TAX RETURN

**Counts 1–4** of the Indictment charge Fairchild with “making and subscribing to a false tax return.” Fairchild is accused of committing this same offense on her tax returns for 2005, 2006, 2007, and 2008, thus making the four separate counts. For you to find Fairchild guilty of the offenses charged in **Counts 1–4** in the Indictment, the prosecution must prove beyond a reasonable doubt *all* of the following five essential elements:

***One*, that Fairchild made and signed an individual income tax return for the year in question that was false as to income or tax liability owed;**

The taxpayer is the one who “makes” a return even if she hired an accountant to prepare the return.

For the return to be false as to income, Fairchild must have received taxable income that year in addition to the taxable income reported on her return, regardless of the amount. Whether the government has or has not suffered a monetary loss as a result of the alleged return is not an element of this offense.

For the return to be false as to tax liability owed, Fairchild must have reported less tax liability owed than that which was actually owed.

The Indictment charges that both the income and tax liability owed were false as stated by Fairchild in the tax returns in question. It is not necessary for the government to prove both. It would be sufficient if the government proves beyond a reasonable doubt that Fairchild made and signed an individual income tax return that was false as to either the income or the tax liability owed. To find the government has met its burden on this element, however, you must unanimously agree on whether the false matter was regarding Fairchild’s income, tax liability owed, or

both. If you are unable to unanimously agree, you cannot find Fairchild guilty.

***Two*, that the return contained a written declaration that it was signed under the penalties of perjury;**

The fact that an individual's name is signed to a return means that, unless and until outweighed by evidence in the case which leads you to a different or contrary conclusion, you may find that a filed tax return was in fact signed by the person whose name appears to be signed to it. If you find proof beyond a reasonable doubt that Fairchild signed her tax return, that is evidence from which you may, but are not required to, find or infer that she had knowledge of the contents of the return.

***Three*, that Fairchild did not believe the return to be true and correct as to income or tax liability owed;**

***Four*, that Fairchild acted willfully;**

To act "willfully" means to voluntarily and intentionally violate a known legal duty.

***And five*, that the false matter in the income tax return was material.**

False matter in an income tax return is "material" if the matter was capable of influencing the Internal Revenue Service.

As noted above, Fairchild is charged with four counts of making and subscribing to a false tax return on her tax returns for 2005, 2006, 2007, and 2008. The separate counts are set out as follows:

Count	Year in Question
1	2005
2	2006
3	2007
4	2008

For you to find Fairchild guilty of making and subscribing to a false tax return, as charged in **Counts 1–4** in the Indictment, the prosecution must prove all of the essential elements of the offense beyond a reasonable doubt. Otherwise, you must find Fairchild not guilty of the offense.

### FINAL INSTRUCTION NO. 3 – INCOME

Under the Internal Revenue Code, gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

The tax is also levied upon profits earned from any business, regardless of its nature—legal or illegal. The law provides that funds or property received from certain sources do not constitute taxable income. Because no income tax is levied on such funds or property, they are not properly reported as income. Such non-taxable funds or property include such items as gifts, inheritances, loans, and other miscellaneous items.

#### FINAL INSTRUCTION NO. 4 – GIFTS

For federal income tax purposes, taxable income does not include money or property acquired by gift. It is for you to decide whether any transfers of funds to Fairchild were gifts, and thus not taxable income, or were, in reality, payments for services rendered or to be rendered. In determining whether a payment of money or property to the defendant is a non-taxable gift, you should consider the intent of the parties at the time the payment was made. In determining whether a transfer of money is a gift for tax purposes, the question is whether in actuality the transfer is a bona fide gift or simply a method for paying compensation for services. Consideration should be given to the intent of the parties, the reasons for the transfer, and the parties' performance in accordance with their intention.

The practical test of whether income is a gift is whether it was received gratuitously and in exchange for nothing. Where the person transferring the money did not act from any sense of generosity, but rather to secure goods, services, or some other such benefit for himself or for another, there is no gift.

The intent of the person transferring the money is important in determining whether the amount received from the donor by the donee is a gift for tax purposes. However, the characterization given to a certain payment by either the defendant or the person making the payment is not conclusive. Among other things, you should consider whether the recipient used any subterfuges, cooperative intermediaries, or devious means with respect to the transfer. You should take into account all the facts and circumstances of this case in determining whether any payment was a gift.

## FINAL INSTRUCTION NO. 5 – GOOD FAITH

One of the issues in this case is whether the defendant acted in “good faith.” “Good faith” is a complete defense to the crime of making and subscribing to a false tax return if the defendant did not act willfully, which is an element of the charges. The essence of the good-faith defense is that one who acts with honest intentions cannot be convicted of a crime requiring proof that the defendant acted willfully, that is, voluntarily and intentionally violating a known legal duty.

The phrase “good faith” includes, among other things, an opinion or belief honestly held, even if the opinion is in error or the belief is mistaken, and the intent to perform all lawful obligations. Proof of willfulness requires more than proof that a defendant only misunderstood the requirements of the law, made a mistake in judgment, was careless, or acted through negligence, even gross negligence. For example, if a person in good faith believes that an income tax return, as prepared by her, truthfully reports the taxable income of the taxpayer under the Internal Revenue law, that person cannot be guilty of willfully making and subscribing to a false tax return. The standard for evaluating whether Fairchild acted in good faith is a subjective rather than an objective standard. That means the test is whether you believe Fairchild was acting in good faith, not whether you believe that an average, reasonable person would have been acting in good faith.

Mere disagreement with the law in and of itself, however, does not constitute a good faith misunderstanding of the requirements of the law. That is because it is the duty of all persons to obey the law whether or not they agree with it. A person’s belief that the tax laws violate her constitutional rights does not constitute a good faith misunderstanding of the requirements of the law. Also, a person’s disagreement with the government’s monetary system and policies does not constitute a good faith misunderstanding of the requirements of the law.



It is for you to decide whether the defendant acted in good faith—that is, whether she sincerely misunderstood the requirements of the law—or whether the defendant knew the requirements of the law and chose not to comply with those requirements. The government has the burden of proving beyond a reasonable doubt that the defendant acted willfully. Evidence that the defendant acted in “good faith” may be considered by you, together with all the other evidence, in determining whether or not she acted willfully.

## 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 she 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 her.

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

- This burden never, ever shifts to the defendant to prove her 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 you must find the defendant not guilty of an offense charged against her, unless the prosecution proves beyond a reasonable doubt that she 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 – 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.

## FINAL INSTRUCTION NO. 9 – 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. 10 – 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 her 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 her 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 June 26, 2014.

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

Karen E. Schreier  
United States District Judge



6/26/14  
Refused.  
K. Scherer

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FINAL INSTRUCTION NO. 2: STRIKE fourth paragraph under element *One* and  
SUBSTITUTE:

The indictment charges that Fairchild understated both the income she earned and the tax she owed on it. You are instructed that, if she understated her income for any of the four years in question, she also understated her tax liability for that year; conversely, if she did not understate her income for any of the four years in question, she also did not understate her tax liability for that year.

Your verdict must be unanimous as to all four counts of the indictment. In Count 4, there was evidence about income Fairchild received from two men, David Karlen and Paul Pietz. To find the government has met its burden on this element in Count 4, you must unanimously agree on whether Fairchild understated her taxable income from David Karlen, her taxable income from Paul Pietz, or both. If you are unable to unanimously agree, you cannot find Fairchild guilty on Count 4.