

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**

APR 29 2015

*[Signature]*  
CLERK

UNITED STATES OF AMERICA,  
Plaintiff,

No. CR 13-40126-01-KES

vs.

**FINAL  
INSTRUCTIONS  
TO THE JURY**

JEREMY F. ROME,  
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

For you to find Jeremy Rome guilty of the offense charged in the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

***One***, that the defendant had children residing in Minnesota and later in South Dakota;

***Two***, that the defendant resided in a state other than Minnesota or South Dakota;

***Three***, that there exists a court order, or an order of an administrative process pursuant to state law, which obligates the defendant to pay a certain amount for the support and maintenance of his children;

***Four***, from on or about September of 2001, and continuing to on or about May of 2013, the defendant failed to pay the support obligation;

***Five***, that the unpaid support obligation is in an amount greater than \$10,000.

***And six***, that the defendant's failure to pay the support obligation was knowing and willful.

“Knowing” means that the defendant was aware of the support obligation at the time it was created or shortly thereafter.

For the defendant's failure to pay the support obligation to be “willful,” you must find that the defendant voluntarily and intentionally failed to pay some amount toward the support obligation despite having an ability to pay, *or* that the defendant's inability to pay some amount toward the support obligation was due to his own voluntary and intentional conduct without justification.

For you to find the defendant guilty, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the offense charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 3 – STATE COURT ORDER

The offense of failure to pay child support turns only on a defendant's violation of a state court order. It does not turn on the fairness of the order, the reasons underlying the state court's issuance of the order, the defendant's relationship with his children or former spouse, or any other matter involving the state court order. Similarly, this court cannot set aside, reissue, or otherwise modify the state court order regardless of the outcome of your verdict.

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 has said or done something, or has 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. 5 – 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. 6 – 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. 7 – 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. 8 – DUTY DURING DELIBERATIONS

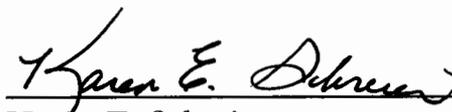
You must follow certain rules while conducting your deliberations and returning your verdict:

- 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 29, 2015.

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

Karen E. Schreier  
United States District Judge

Defendant's Proposed Jury Instruction No. 3

You are instructed that your verdict on this criminal charge of willful failure to pay child support, whether guilty or not guilty, will have no effect on what Defendant Jeremy Rome owes in back child support. The existence and the amount of the debt does not by itself prove that a crime has been committed, and, by the same token, the verdict on whether a crime has been committed will not change the existence or the amount of the debt.

4/28/15  
Refused  
K. Schreier

GOVERNMENT'S PROPOSED JURY INSTRUCTION # 8

A non-custodial parent who does not have the funds to satisfy the child support award, and who does not obtain a reduction or remission of the award because of inability to pay, will almost certainly be engaged in willful defiance of the state court's child support order.

4-28-15  
Refused.  
K. Schreier

Source: *United States v. Ballek*, 170 F.3d 871, 873 (9th Cir.1999), cert. denied, 528 U.S. 853, 120 S.Ct. 318, 145 L.Ed.2d 114 (1999).