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

<p>UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN A. NELSON, Defendant.</p>	<p>CR 13-40033-01-KES FINAL INSTRUCTIONS TO THE JURY</p>
<p>UNITED STATES OF AMERICA, Plaintiff, vs. THEODORE JOHN NELSON, JR., a/k/a Ted Nelson, Defendant.</p>	<p>CR 13-40034-01-KES FINAL INSTRUCTIONS TO THE JURY</p>
<p>UNITED STATES OF AMERICA, Plaintiff, vs. THEODORE JOHN NELSON, JR., a/k/a Ted Nelson, and STEVEN A. NELSON, Defendants.</p>	<p>CR 13-40073-KES FINAL INSTRUCTIONS TO THE JURY</p>

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VERDICT FORMS

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 FILE AN INCOME TAX RETURN

The Indictment in case No. CR 13-40033 charges Steven Nelson with failure to file an income tax return for calendar year 2006. Counts VIII-XIV of the Superseding Indictment in case No. CR 13-40073 charge Steven Nelson with failure to file an income tax return for calendar years 2007, 2008, 2009, 2010, 2011, 2012, and 2013. The Indictment in case No. CR 13-40034 charges Theodore Nelson with failure to file an income tax return for calendar year 2006. Counts II-VII of the Superseding Indictment in case No. CR 13-40073 charge Theodore Nelson with failure to file an income tax return for calendar years 2007, 2008, 2009, 2011, 2012, and 2013.

For you to find Theodore Nelson or Steven Nelson guilty of “failure to file an income tax return,” as charged in the counts identified above, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, the defendant was required to file a federal income tax return for the taxable year charged;

A single person is required to file a federal income tax return for a taxable year if he had gross income in excess of the minimum gross income requirement for that taxable year. A married person is required to file a federal income tax return for a taxable year if he had a total gross income, when combined with that of his spouse, in excess of the minimum gross income requirement for that taxable year.

Gross income is all income from whatever source derived. Gross income includes the following:

- Compensation for services, including fees, commissions, and similar items
- Gross income derived from business
- Gains derived from dealings in property
- Interest

- Rents
- Royalties
- Dividends
- Alimony and separate maintenance payments
- Annuities
- Income from life insurance and endowment contracts
- Pensions
- Income from discharge of indebtedness
- Distributive share of partnership gross income
- Income in respect of a decedent
- Income from an interest in an estate or trust

Income is taxed to the person or entity that in fact earns the income.

The fact that a person may be entitled to deductions from income in sufficient amount so that no tax is due does not affect that person's obligation to file.

The prosecution is not required to show that a tax was due and owing or that the defendant intended to evade or defeat the payment of taxes, only that he willfully failed to file a return.

If you find beyond a reasonable doubt that the defendant had the required gross income in the taxable year in question, then that defendant was required to file a tax return on or before the date set forth in the table below.

CASE NO. COUNT	YEAR	DEFENDANT	MINIMUM GROSS INCOME REQUIREMENT	FILING DEADLINE
CR 13-40033	2006	Steven Nelson	\$16,900 (married)	April 17, 2007
CR 13-40034	2006	Theodore Nelson	\$16,900 (married)	April 17, 2007
CR 13-40073 Count II	2007	Theodore Nelson	\$17,500 (married)	April 15, 2008
CR 13-40073 Count III	2008	Theodore Nelson	\$17,900 (married)	April 15, 2009
CR 13-40073 Count IV	2009	Theodore Nelson	\$18,700 (married)	April 15, 2010
CR 13-40073 Count V	2011	Theodore Nelson	\$19,000 (married)	April 17, 2012
CR 13-40073 Count VI	2012	Theodore Nelson	\$20,650 (married)	April 15, 2013
CR 13-40073 Count VII	2013	Theodore Nelson	\$21,200 (married)	April 15, 2014
CR 13-40073 Count VIII	2007	Steven Nelson	\$17,500 (married)	April 15, 2008
CR 13-40073 Count IX	2008	Steven Nelson	\$17,900 (married)	April 15, 2009
CR 13-40073 Count X	2009	Steven Nelson	\$18,700 (married)	April 15, 2010
CR 13-40073 Count XI	2010	Steven Nelson	\$9,350 (single)	April 18, 2011
CR 13-40073 Count XII	2011	Steven Nelson	\$9,500 (single)	April 17, 2012
CR 13-40073 Count XIII	2012	Steven Nelson	\$9,750 (single)	April 15, 2013
CR 13-40073 Count XIV	2013	Steven Nelson	\$10,000 (single)	April 15, 2014

Two, the defendant knew that he was required to file such a tax return;

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant in connection with the offense alleged, and all the facts and circumstances in evidence which may aid in a determination of that defendant's knowledge or intent.

And three, the defendant willfully failed to file the required tax return on or before the time required by law.

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

If all of these elements have been proved beyond a reasonable doubt, and if it has further been proved beyond a reasonable doubt that the defendant was not acting in “good faith,” as explained in Final Instruction No. 3, then you must find the defendant guilty of the offense charged. Otherwise, you must find the defendant not guilty of the offense charged.

FINAL INSTRUCTION NO. 3 – GOOD FAITH

One of the issues in this case is whether the defendants acted in “good faith.” “Good faith” is a complete defense to the crime of failing to file the required tax return on or before the time required by law, if the defendant did not act willfully, which is an element of the charge. 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, or was careless. For example, if a person in good faith believes that he is not required to file an income tax return, then that person cannot be guilty of willfully failing to file a tax return.

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 his 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 a defendant acted in good faith—that is, whether he sincerely misunderstood the requirements of the law—or whether that defendant knew the requirements of the law and chose not to comply with those requirements. The prosecution has the burden of proving beyond a reasonable doubt that a defendant acted willfully. Evidence that a defendant

acted in “good faith” may be considered by you, together with all the other evidence, in determining whether or not that defendant acted willfully.

FINAL INSTRUCTION NO. 4 – CONSPIRACY TO DEFRAUD THE UNITED STATES

Count I of the Superseding Indictment in case No. CR 13-40073 charges both Steven Nelson and Theodore Nelson with “conspiracy to defraud the United States.” For you to find Theodore Nelson or Steven Nelson guilty of the “conspiracy” offense charged in Count I of the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, beginning on or about January 31, 1992, until and continuing to the date of this Indictment, two or more people reached an agreement or came to an understanding to commit the crime of defrauding the United States by impeding, impairing, obstructing, or defeating the lawful governmental functions of the Internal Revenue Service in the ascertainment, computation, assessment, or collection of income taxes;

A conspiracy is an agreement of two or more persons to commit one or more crimes. It makes no difference whether any co-conspirators are defendants or named in the Superseding Indictment. For this element to be proved,

- The defendant 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
- The conspirators did not have to personally benefit from the conspiracy

The Superseding Indictment charges a conspiracy to defraud the United States by impeding, impairing, obstructing, or defeating the lawful governmental functions of the Internal Revenue Service in the ascertainment, computation, assessment, or collection of income taxes. For you to find that the government has proved a conspiracy, you must unanimously find that there was an agreement to act for this purpose.

Two, that the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

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

The defendant 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 the defendant 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 the defendant had some degree of knowing involvement in the conspiracy.

In deciding whether an alleged conspiracy existed, you may consider the acts and statements of each person alleged to be part of the agreement. In deciding whether the defendant joined the agreement, you may consider only the acts and statement of the defendant.

Three, that at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding;

A person knows the purpose of the agreement if he is aware of the agreement and does not participate in it through ignorance, mistake, carelessness, negligence, or accident. It is seldom, if ever, possible to determine directly what was in a defendant's mind. Thus a defendant's knowledge of the agreement and its purpose can be proved like anything else, from reasonable conclusions drawn from the evidence.

It is not enough that the defendant and other alleged participants in the agreement to defraud the United States by impeding, impairing, obstructing, or defeating the lawful governmental functions of the Internal Revenue Service in the ascertainment, computation, assessment, or collection of income taxes simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. The defendant must have known of the existence and purpose of the agreement. Without such knowledge, the defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy.

And four, while the agreement was in effect, a person or persons who had joined in the agreement knowingly did one or more acts for the purpose of carrying out or carrying forward the agreement.

The defendant does not have to personally commit an act in furtherance of the agreement, know about it, or witness it. It makes no difference which of the participants in the agreement did the act. This is because a conspiracy is a kind of "partnership" so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts of every other member done to further their scheme.

The act done in furtherance of the agreement does not have to be an unlawful act. The act may be perfectly innocent in itself.

It is not necessary that the prosecution prove that more than one act was done in furtherance of the agreement. It is sufficient if the prosecution proves *one* such act; but in that event, in order to return a verdict of guilty, you must all agree which act was done.

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 Count I of the Superseding Indictment.

FINAL INSTRUCTION NO. 5 – ACTS AND STATEMENTS OF
CO-CONSPIRATORS

If you determine that an agreement existed and the defendant joined the agreement, then you may consider acts knowingly done and statements knowingly made by the defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, for a person who knowingly, voluntarily, and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

Acts and statements which are made before the conspiracy began or after it ended are admissible only against the person making them and should not be considered by you against any other person.

FINAL INSTRUCTION NO. 6 – IMPEDING THE INTERNAL REVENUE SERVICE

Count XV of the Superseding Indictment in case No. CR 13-40073 charges Theodore Nelson with impeding the Internal Revenue Service. Count XVI of the Superseding Indictment in case No. CR 13-40073 charges Steven Nelson with impeding the Internal Revenue Service.

For you to find Theodore Nelson or Steven Nelson guilty of “impeding the Internal Revenue Service,” the prosecution must prove the following essential elements beyond a reasonable doubt:

One, that the defendant in any way corruptly;

To act “corruptly” means to act with the intent to secure an unlawful advantage or benefit either for oneself or for another.

Two, endeavored to;

An “endeavor” is any effort or any act or attempt to effectuate an arrangement or to try to do something, the natural and probable consequence of which is to obstruct or impede the due administration of the Internal Revenue laws.

And three, obstruct or impede the due administration of the Internal Revenue Code.

To “obstruct or impede” means to hinder or prevent or delay, or make more difficult, the due administration of the Internal Revenue laws. However, it is not necessary for the prosecution to prove that the administration of the Internal Revenue laws was in fact obstructed or impeded in any way, only that the defendant corruptly endeavored to do so.

It is not necessary that the prosecution prove the defendant committed all of the acts alleged in the Superseding Indictment. It would be sufficient if the prosecution proves beyond a reasonable doubt that the defendant committed any of the acts alleged in an endeavor to corruptly obstruct or impede the due administration of the Internal Revenue laws. However, you must unanimously agree upon which of the alleged acts the defendant committed.

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.

FINAL INSTRUCTION NO. 7 – SUMMARIES

You will remember that certain schedules, summaries, and charts were admitted in evidence. You may use those schedules, summaries, and charts as evidence, even though the underlying documents and records are not here. Those charts or summaries are used for convenience. If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the books, records or other underlying evidence.

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 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. 9 – PRESUMPTION OF INNOCENCE AND BURDEN
OF PROOF

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

- This presumption means that you must put aside all suspicion that might arise from a defendant's arrest, the charges, or the fact that he is here in court.
- This presumption remains with a defendant throughout the trial.
- This presumption is enough, alone, for you to find a 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 a defendant to prove his innocence.
- This burden means that a defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if a 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 a 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. 10 – 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 a defendant, keeping in mind that a 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 a 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.
- Speculation, conjecture, and suspicion do not serve as a proper basis for evidence of proof beyond a reasonable doubt.
- 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. 11 – 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 a defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that a 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.

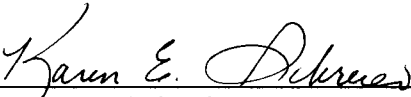
FINAL INSTRUCTION NO. 12 – DUTY DURING DELIBERATIONS

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

- 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 a defendant is not guilty or guilty. If a 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 a defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against a defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Forms. The foreperson must bring the signed verdict forms to the courtroom when it is time to announce your verdicts.
- When you have reached your verdicts, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated May 12, 2015.



Karen E. Schreier
United States District Judge

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

You may find that the defendant acted knowingly if you find beyond a reasonable doubt that the defendant believed there was a high probability that he received taxable income upon which taxes were due and owing and that he failed to file income tax returns, and that he took deliberate actions to avoid verifying that fact. Knowledge may be inferred if the defendant deliberately closed his eyes to what would otherwise have been obvious to him. A willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts.

You may not find the defendant acted "knowingly" if you find he was merely negligent, careless, or mistaken as to whether he received taxable income upon which taxes were due and owing and that he failed to file income tax returns.

Source: Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit, § 7.0~~9~~ (2014 ed.) (modified)

5/11/15
Refused
K. Anderson