

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

No. 08-CR-29-LRR

vs.

JEFFREY JOSEPH DAVIS,

FINAL JURY INSTRUCTIONS

Defendant.

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a verdict, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses, including the defendant, the documents and other things received as exhibits and the facts that have been stipulated—that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

INSTRUCTION NO. 5

The government and the defendant have stipulated—that is, they have agreed—that certain facts are as counsel have just stated. You must therefore treat those facts as having been proved.

INSTRUCTION NO. 6

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 7

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness, including the defendant, who has testified in this case.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 8

In a previous instruction, 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 are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; 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.

You have heard evidence that Defendant was once convicted of crimes. You may use that evidence only to help you decide whether to believe the Defendant and how much weight to give his testimony.

You should judge the testimony of a defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 9

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdict, in the same condition as it was received by you.

INSTRUCTION NO. 10

The Indictment in this case charges that defendant Jeffrey Joseph Davis committed the crime of willful failure to pay a legal child support obligation.

Under Count 1, the Indictment charges that between about January 28, 2000, to the present, defendant Jeffrey Joseph Davis, who resides in a state different than his children, willfully failed to pay a past due child support obligation, in an amount greater than \$10,000.

The defendant has pleaded not guilty to that charge.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crime charged.

There is no burden upon the defendant to prove that he is innocent.

INSTRUCTION NO. 11

The crime of willful failure to pay a legal child support obligation, as charged against defendant in the Indictment, has five essential elements, which are:

One, that defendant had been ordered by the state district court in Benton County, Iowa, to pay a support obligation for two children;

Two, that defendant knew of the child support order;

Three, that while the support obligation was in effect, the defendant lived in a different state than the children, who live in the Northern District of Iowa;

Four, that between about January 28, 2000 to the present, defendant willfully failed to pay the child support obligation; and

Five, that between about January 28, 2000 to the present, the accumulated amount of the support obligation was greater than \$10,000.

If all of these essential elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged; otherwise you must find the defendant not guilty of this crime.

The term "support obligation" as used in these instructions means any amount determined under a court order to be due from a person for the support and maintenance of a child. The amount determined under a court order may be in the form of an order for an amount due every week or every month.

An act is done "willfully" if done voluntarily and intentionally and with the purpose of violating a known legal duty. Payment of a court-ordered child support obligation is a legal duty. In determining whether the government has proved beyond a reasonable doubt that defendant acted willfully, you must decide whether he had the financial ability

(CONTINUED)

INSTRUCTION NO. 11 (Cont'd)

to pay the child support obligation. You may find that he had the financial ability to pay and acted willfully if you find that he had sufficient income or assets, or both, to enable him to pay the child support obligation, or at least make partial payments. In other words, if you find that he had the ability to pay more than he did in fact pay, you may find that his failure to pay more was willful.

It is not necessary that any willful failure to pay was continuous during that entire period of time or that the accumulated amount of the obligation was greater than \$10,000 during that entire period of time. The government must prove beyond a reasonable doubt that the obligation was greater than \$10,000 at some time between those dates, and at that time defendant willfully failed to pay the obligation.

INSTRUCTION NO. 12

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. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 13

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

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

INSTRUCTION NO. 14

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 15

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

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, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

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

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the 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.

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not guilty must be

unanimous. Nothing I have said or done is intended to suggest what your verdict might be—that is entirely for you to decide.

INSTRUCTION NO. 16

Attached to these instructions you will find the Verdict Form. The Verdict Form is simply the written notice of the decision that you reach in this case. The answer to the Verdict Form must be the unanimous decision of the jury.

You will take the Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed on the answer to the Verdict Form, your foreperson will fill out the Verdict Form, sign and date it and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Form in accord with the evidence and these instructions.

July 24, 2008
DATE

Linda R. Reade

LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 08-CR-29-LRR

VS.

JEFFREY JOSEPH DAVIS,

Defendant.

VERDICT FORM
COUNT 1

We, the Jury, unanimously find the defendant, Jeffrey Joseph Davis,
Guilty of the crime charged in Count 1 of the Indictment.
Not Guilty/Guilty

Note: If you unanimously find the defendant, Jeffrey Joseph Davis, not guilty of Count 1, have your foreperson write "not guilty" in the above blank space, and sign and date this Verdict Form.

If you unanimously and beyond a reasonable doubt find the defendant, Jeffrey Joseph Davis, guilty of Count 1, have your foreperson write "guilty" in the above blank space, then sign and date this Verdict Form.

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FOREPERSON

DATE

7-24-08