

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 v.) No. 05-CR-190
ROBERT HALLOCK) Judge Matthew Kennelly

PROPOSED JURY INSTRUCTIONS

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

GOVERNMENT INSTRUCTION NO. 1

Seventh Circuit Committee (1998) 1.01

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

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Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

GOVERNMENT INSTRUCTION NO. 2

Seventh Circuit Committee (1998) 1.02

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness' age;
- the witness' intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness' memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

[You should judge a defendant's testimony in the same way that you judge the testimony of any other witness.]

GOVERNMENT INSTRUCTION NO. 3

Seventh Circuit Committee (1998) 1.03

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness' age;
- the witness' intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness' memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

[You should judge a defendant's testimony in the same way that you judge the testimony of any other witness.]

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

GOVERNMENT INSTRUCTION NO. 4

Seventh Circuit Committee (1998) 1.04

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

GOVERNMENT INSTRUCTION NO. 5

Seventh Circuit Committee (1998) 1.05

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

Certain things are not evidence. I will list them for you:

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

GOVERNMENT INSTRUCTION NO. 6

Seventh Circuit Committee (1998) 1.06

Certain things are not evidence. I will list them for you:

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

The indictment in this case is the formal method of accusing the defendant of an offense and placing the defendant on trial. It is not evidence against the defendant and does not create any inference of guilt.

The defendant is charged with the offense of tax evasion. The defendant has pleaded not guilty to the charge.

GOVERNMENT INSTRUCTION NO. 7

Seventh Circuit Committee (1998) 2.01 (modified)

The indictment in this case is the formal method of accusing the defendant of an offense and placing the defendant on trial. It is not evidence against the defendant and does not create any inference of guilt.

The defendant is charged with the offense of tax evasion. The defendant has pleaded not guilty to the charge.

The defendant is presumed to be innocent of the charge. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

GOVERNMENT INSTRUCTION NO. 8

Seventh Circuit Committee (1998) 2.03

The defendant is presumed to be innocent of the charge. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

The defendant has an absolute right not to testify. The fact that the defendant did not testify should not be considered by you in any way in arriving at your verdict.

GOVERNMENT INSTRUCTION NO. 9

Seventh Circuit Committee (1998) 3.01

The defendant has an absolute right not to testify. The fact that the defendant did not testify should not be considered by you in any way in arriving at your verdict.

You have heard a witness give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness' qualifications, and all of the other evidence in the case.

GOVERNMENT INSTRUCTION NO. 10

Seventh Circuit Committee (1998) 3.07

You have heard a witness give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness' qualifications, and all of the other evidence in the case.

Certain summaries are in evidence. Their accuracy has been challenged by the defendant. Thus, the original materials upon which the exhibits are based have also been admitted into evidence so that you may determine whether the summaries are accurate.

GOVERNMENT INSTRUCTION NO. 11

Seventh Circuit Committee (1998) 3.16

Certain summaries are in evidence. Their accuracy has been challenged by the defendant. Thus, the original materials upon which the exhibits are based have also been admitted into evidence so that you may determine whether the summaries are accurate.

The defendant is charged with tax evasion. To sustain a charge of attempting to evade or defeat the defendant's individual income tax, the government must prove the following propositions as to each count:

First, on October 13 of the year following the tax year, federal income tax was due and owing by the defendant;

Second, the defendant intended to evade or defeat the ascertainment, assessment, computation or payment of the tax; and

Third, the defendant willfully did some act in furtherance of the intent to evade tax or payment of the tax.

If you find from your consideration of all of the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

GOVERNMENT INSTRUCTION NO. 12

Seventh Circuit Committee (1998) 26 U.S.C. 7201 (modified)

The defendant is charged with tax evasion. To sustain a charge of attempting to evade or defeat the defendant's individual income tax, the government must prove the following propositions as to each count:

First, on October 13 of the year following the tax year, federal income tax was due and owing by the defendant;

Second, the defendant intended to evade or defeat the ascertainment, assessment, computation or payment of the tax; and

Third, the defendant willfully did some act in furtherance of the intent to evade tax or payment of the tax.

If you find from your consideration of all of the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

The term “willfully” means the voluntary and intentional violation of a known legal duty, in other words, acting with the specific intent to avoid paying a tax imposed by the income tax laws or to avoid assessment of a tax that it was the legal duty of the defendant to pay to the government, and that the defendant knew it was his legal duty to pay.

GOVERNMENT INSTRUCTION NO. 13

Seventh Circuit Committee (1998) 26 U.S.C. 7201 Definition of Willfully [(modified)]

The term “willfully” means the voluntary and intentional violation of a known legal duty, in other words, acting with the specific intent to avoid paying a tax imposed by the income tax laws or to avoid assessment of a tax that it was the legal duty of the defendant to pay to the government, and that the defendant knew it was his legal duty to pay.

“Willfulness” may be inferred from conduct such as concealment of assets or covering up sources of information, destroying books or records, extensive use of cashier’s checks or cash to pay expenses, and handling one’s affairs to avoid making the records usually generated by a particular transaction.

GOVERNMENT INSTRUCTION NO. 14

Seventh Circuit Committee (1998) 26 U.S.C. 7201 Committee comment, Willfully (modified); United States v. Spies, 317 U.S. 492, 499, 63 S. Ct. 364, 368 (1943); United States v. Eaken, 17 F.3d 203, 206 (7th Cir. 1994); United States v. Mortimer, 343 F.2d 500, 502-03 (7th Cir. 1965); United States v. Holovachka, 314 F.2d 345, 358 (7th Cir. 1963).

“Willfulness” may be inferred from concealment of assets or covering up sources of information, destroying books or records, extensive use of cashier’s checks or cash to pay expenses, and handling one’s affairs to avoid making the records usually generated by a particular transaction.

You may consider the defendant's educational background and his experience as a lawyer to assist you to evaluate willfulness by determining whether the defendant knew that the law required him to report all income, regardless of source, and pay tax on it, and that he voluntarily and intentionally violated that legal requirement.

GOVERNMENT INSTRUCTION NO. 15

United States v. Guidry, 199 F.3d 1150, 1157-58 (10th Cir. 1999); United States v. Klausner, 80 F.3d 55, 63 (2d Cir. 1996); United States v. Segal, 867 F.2d 1173, 1179 (8th Cir. 1989).

You may consider the defendant's educational background and his experience as a lawyer to assist you to evaluate willfulness by determining whether the defendant knew that the law required him to report all income, regardless of source, and pay tax on it, and that he voluntarily and intentionally violated that legal requirement.

If you find beyond a reasonable doubt that the defendant had a tax liability for a particular year, then I instruct you as a matter of law, that tax was due and owing on April 15 or other date set by law or legal extension of the following year.

GOVERNMENT INSTRUCTION NO. 16

Seventh Circuit Committee (1998) 26 U.S.C. 7201, Date Tax is Due and Owing

If you find beyond a reasonable doubt that the defendant had a tax liability for a particular year, then I instruct you as a matter of law, that tax was due and owing on April 15 or other date set by law or legal extension of the following year.

In tax evasion cases, various different schemes, subterfuges, or devices may be resorted to in an attempt to evade or defeat the assessment or payment of income tax. The scheme alleged in the indictment is that the defendant, with intent to evade or defeat his tax, committed the following affirmative acts: (1) filing and causing to be filed a false and fraudulent 1997 U.S. Individual Income Tax Return, Form 1040, with the Internal Revenue Service, Atlanta Service Center that did not include his true income; (2) failing to pay the Internal Revenue Service said income tax; (3) selling fraudulent certificates of deposit; (4) using a sham business or nominee in the name of Himmel & Grund, LLC, for the purpose of hiding his true income; (5) listing Victoria Pappas as a partner and limited liability company member of Himmel & Grund LLC, LLC, with 50 to 80% ownership and profit and loss sharing for the purpose of hiding his true income; (6) hiring David Koontz to pay monies to defendant's creditors and others, through the extensive use of cashier's checks drawn directly from the Himmel and Grund, LLC, bank account and telling David Koontz he had paid taxes on the monies; (7) making substantial financial payments to Victoria Pappas and Victoria Pappas' parents.

It is not necessary that the government prove each of the acts listed above, nor is the government required to prove one of the specific affirmative acts listed above. But, to sustain the charge of tax evasion, the government must prove beyond a reasonable doubt that the defendant committed at least one affirmative act of evasion. An act, even though a lawful activity in-and-of-itself, can serve as an affirmative act of evasion, if it is done with the intent to evade income tax.

GOVERNMENT INSTRUCTION NO. 17

Devitt & Blackmar, Federal Jury Practice and Instructions, § 67.04 (5th ed.) (modified).

In tax evasion cases, various different schemes, subterfuges, or devices may be resorted to in an attempt to evade or defeat the assessment or payment of income tax. The scheme alleged in the indictment is that the defendant, with intent to evade or defeat his tax, committed the following affirmative acts: (1) filing and causing to be filed a false and fraudulent 1997 U.S. Individual Income Tax Return, Form 1040, with the Internal Revenue Service, Atlanta Service Center that did not include his true income; (2) failing to pay the Internal Revenue Service said income tax; (3) selling fraudulent certificates of deposit; (4) using a sham business or nominee in the name of Himmel & Grund, LLC, for the purpose of hiding his true income; (5) listing Victoria Pappas as a partner and limited liability company member of Himmel & Grund LLC, LLC, with 50 to 80% ownership and profit and loss sharing for the purpose of hiding his true income; (6) hiring David Koontz to pay monies to defendant's creditors and others, through the extensive use of cashier's checks drawn directly from the Himmel and Grund, LLC, bank account and telling David Koontz he had paid taxes on the monies; (7) making substantial financial payments to Victoria Pappas and Victoria Pappas' parents.

It is not necessary that the government prove each of the acts listed above, nor is the government required to prove one of the specific affirmative acts listed above. But, to sustain the charge of tax evasion, the government must prove beyond a reasonable doubt that the defendant committed at least one affirmative act of evasion. An act, even though a lawful activity in-and-of-itself, can serve as an affirmative act of evasion, if it is done with the intent to evade income tax.

Federal income taxes are levied upon income derived from compensation for personal services of every kind and in whatever form paid, whether as wages, commissions, or money earned for performing services. The tax is also levied upon profits earned from any business, regardless of its nature – legal or illegal – and from interest, dividends, rents and the like. The income tax also applies to any gain derived from the sale of a capital asset. In short, the term "gross income" means all income from whatever source unless it is specifically excluded by law. The essence of income is the accrual of some gain, profit, or benefit to the taxpayer.

On the other hand, the law does provide that funds acquired from certain sources are not subject to the income tax. The most common non-taxable sources are loans, gifts, inheritances, the proceeds of insurance policies, and funds derived from the sale of an asset to the extent those funds equal the cost of the asset.

GOVERNMENT INSTRUCTION NO. 18

Eleventh Circuit Committee (2003) 93.1 (modified)

Federal income taxes are levied upon income derived from compensation for personal services of every kind and in whatever form paid, whether as wages, commissions, or money earned for performing services. The tax is also levied upon profits earned from any business, regardless of its nature – legal or illegal – and from interest, dividends, rents and the like. The income tax also applies to any gain derived from the sale of a capital asset. In short, the term "gross income" means all income from whatever source unless it is specifically excluded by law. The essence of income is the accrual of some gain, profit, or benefit to the taxpayer.

On the other hand, the law does provide that funds acquired from certain sources are not subject to the income tax. The most common non-taxable sources are loans, gifts, inheritances, the proceeds of insurance policies, and funds derived from the sale of an asset to the extent those funds equal the cost of the asset.

Under the Internal Revenue Code, income earned or generated by a partnership is attributed proportionally to the individual partners of that partnership, rather than to the partnership itself. In other words, because a partnership is not a separate taxable entity for federal income tax purposes, its profits and losses flow through directly to the partners, and the partners must report that income from the partnership as their own on their individual tax returns.

GOVERNMENT INSTRUCTION NO. 19

26 U.S.C. §§ 701, 702(c), 61(a)(3); 26 C.F.R. § 1.702-1(c)(1); Adler & Drobny, Ltd. v. United States, 9 F.3d 627, 628 n.3 (7th Cir. 1993).

Under the Internal Revenue Code, income earned or generated by a partnership is attributed proportionally to the individual partners of that partnership, rather than to the partnership itself. In other words, because a partnership is not a separate taxable entity for federal income tax purposes, its profits and losses flow through directly to the partners, and the partners must report that income from the partnership as their own on their individual tax returns.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

GOVERNMENT INSTRUCTION NO. 20

Seventh Circuit Committee (1998) 7.01 (modified)

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

GOVERNMENT INSTRUCTION NO. 21

Seventh Circuit Committee (1998) 7.05

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.

GOVERNMENT INSTRUCTION NO. 22

Seventh Circuit Committee (1998) 7.06

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that the following documents:

PROPOSED JURY INSTRUCTIONS

were served on **November 7, 2005**, in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR.5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

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