

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

JUL 02 2008


CLERK

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 08-50005-01-KES

vs.

CLAUDIA LENORE LONGMAN

Defendant.

**REDACTED
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 - COUNT I - SUPPLEMENTAL SECURITY INCOME
REPRESENTATIVE PAYEE FRAUD

Count I of the indictment charges that, beginning in or about December of 2003, and continuing to on or about October of 2004, at Martin and elsewhere, in the District of South Dakota, the defendant, Claudia Lenore Longman, in a matter within the jurisdiction of the Social Security Administration, having made application to receive Social Security Supplemental Income (“SSI”) payments for the use and benefit of W.H.P., did knowingly and willfully convert said SSI benefits to a use other than for the use and benefit of W.H.P., to wit: Claudia Lenore Longman did receive \$2,944 of SSI benefit money for the months of April 2003 through November 2003, a time period when W.H.P. lived with Claudia Lenore Longman, said SSI benefit money being sent to Claudia Lenore Longman in the form of a retroactive check dated December 18, 2003, and did fail to spend said money for W.H.P.’s present or future needs, in that she spent said money for her own personal use.

Elements

For you to find Ms. Longman guilty of the “Supplemental Security Income Representative Payee Fraud” offense charged in **Count I** of the indictment, the government must prove the following four essential elements beyond a reasonable doubt:

One, that beginning in or about December of 2003, and continuing

to on or about October of 2004, Ms. Longman applied to receive SSI benefit payments for the use and benefit of W.H.P.;

***Two*, that Ms. Longman's application for SSI benefit payments for the benefit of W.H.P. was a matter within the jurisdiction of the Social Security Administration;**

***Three*, that Ms. Longman received the SSI benefit payments for the use and benefit of W.H.P.; and**

***Four*, that Ms. Longman knowingly and willfully converted said SSI benefit payments to a use other than for the use and benefit of W.H.P.**

For you to find the defendant guilty of Supplemental Security Income Representative Payee Fraud, as the indictment charges in **Count I**, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

FINAL INSTRUCTION NO. 3 - COUNT II - SUPPLEMENTAL SECURITY INCOME
BENEFITS FRAUD

Count II of the indictment charges that beginning in or about December of 2003, and continuing to on or about October of 2004, at Martin and elsewhere, in the District of South Dakota, the defendant, Claudia Lenore Longman, in a matter within the jurisdiction of the Social Security Administration, having knowledge of the occurrence of an event affecting her continued right to receive SSI benefit payments on behalf of W.H.P., concealed and failed to disclose such event with the intent to fraudulently secure payment when no such benefit was authorized, to wit: Claudia Lenore Longman intentionally concealed the fact that W.H.P. no longer lived with her and was an inpatient resident at the Black Hills Children's Home located in Rapid City, South Dakota, in order to continue to receive and spend SSI benefit payments made by the Social Security Administration to W.H.P..

Elements

For you to find Ms. Longman guilty of the "Supplemental Security Income Benefits Fraud" offense charged in **Count II** of the indictment, the government must prove the following four essential elements beyond a reasonable doubt:

One, that in or about December of 2003, and continuing to on or about October of 2004, Ms. Longman knew of the occurrence of an event affecting the initial or continued right of SSI benefit payments for W.H.P.

on whose behalf she was receiving SSI benefit payments;

***Two*, that the issuance of SSI benefit payments on behalf of W.H.P. to Ms. Longman was a matter within the jurisdiction of the Social Security Administration;**

***Three*, that Ms. Longman concealed or failed to disclose said event with an intent to fraudulently secure SSI benefit payments for W.H.P. when no such benefit was authorized to her; and**

***Four*, that Ms. Longman knowingly and willfully converted said SSI payments to a use other than for the use and benefit of W.H.P.**

For you to find the defendant guilty of Supplemental Security Income Benefits Fraud, as the indictment charges in **Count II**, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

FINAL INSTRUCTION NO. 4 - COUNT III - THEFT OF GOVERNMENT
PROPERTY

Count III of the indictment charges that beginning in or around December of 2003, and continuing to on or about October of 2004, at Martin and elsewhere, in the District of South Dakota, the defendant, Claudia Lenore Longman, did knowingly embezzle, steal, purloin, and convert to her own use money of the Social Security Administration, a department or agency of the United States, namely, SSI payments issued to W.H.P. for the months of December 2003, through October 2004, to which Claudia Lenore Longman knew she was not entitled, said money having a value of approximately \$4,128.

Elements

For you to find Ms. Longman guilty of the “Theft of Government Property” offense charged in **Count III** of the indictment, the government must prove the following three essential elements beyond a reasonable doubt:

One, that on or about between December of 2003 and October of 2004, Ms. Longman voluntarily, intentionally and knowingly embezzled, stole, or converted money to her own use;

To “embezzle” means voluntarily and intentionally to take or to convert to one’s use the property of another which property came into the defendant’s possession lawfully.

Two, that the money belonged to the United States and had a value in excess of \$1000; and

Three, that Ms. Longman did so with the intent to deprive the

United States of the use or benefit of the money taken.

For you to find the defendant guilty of Theft of Government Property, as the indictment charges in **Count III**, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

FINAL INSTRUCTION NO. 5 - COUNT IV - FALSE STATEMENT

Count IV of the indictment charges that on or about December 11, 2003, at Martin and elsewhere, in the District of South Dakota, in a matter within the jurisdiction of the Social Security Administration of the United States, the defendant, Claudia Lenore Longman, did knowingly and willfully make a false, fraudulent, and fictitious material statement and representation, to wit:

Claudia Lenore Longman did submit to the Social Security Administration an SSI Review Statement regarding SSI benefit payments received by Claudia Lenore Longman on behalf of W.H.P., in which she claimed that W.H.P. was living in her household in Martin, South Dakota, said form signed and dated by Claudia Lenore Longman, knowing that this statement was not true and correct, to wit: W.H.P. was actually an inpatient resident at the Black Hills Children's Home located in Rapid City, South Dakota, and had been a resident at the Black Hills Children's Home since November 17, 2003.

Elements

For you to find Ms. Longman guilty of the "False Statement" offense charged in **Count IV** of the indictment, the government must prove the following three essential elements beyond a reasonable doubt:

One, that on or about December 11, 2003, Ms. Longman knowingly, voluntarily and intentionally made a false, fictitious, or fraudulent statement or representation in an SSI Review Statement;

A statement is “false” or “fictitious,” if untrue when made, and then known to be untrue by the person making it or causing it to be made.

A statement or representation is “fraudulent,” if known to be untrue, and made or caused to be made with the intent to deceive the governmental agency to whom it was submitted.

Two, that the statement or representation was material to the Social Security Administration; and

A statement or representation is “material,” if it has a natural tendency to influence, or is capable of influencing, the decision of the agency. However, whether a statement or representation is “material” does not depend on whether the agency was actually deceived.

Three, that the SSI Review Statement was a matter within the jurisdiction of the Social Security Administration.

You may find that this element has been satisfied if you find that the Social Security Administration’s function includes determining an individual’s eligibility to receive SSI benefit payments on behalf of another individual.

For you to find the defendant guilty of making a False Statement, as the indictment charges in **Count IV**, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this offense.

FINAL INSTRUCTION NO. 6 - PROOF OF INTENT OR KNOWLEDGE

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 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.

FINAL INSTRUCTION NO. 7 - GOOD FAITH

One issue in this case is whether the defendant acted with an intent to defraud or deprive the United States of Social Security monies. Good faith is a complete defense to all the charges if it is inconsistent with knowingly and willfully which is an element of all the charges

In this connection, 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 sincerely believed she was complying with the law.

Evidence that the defendant acted in good faith should be considered by you, together with all other evidence in this case, in determining whether the defendant acted with an intent to defraud or deprive the government of monies. If you find that the defendant acted without that intent, but instead acted in good faith, you must find the defendant not guilty.

FINAL INSTRUCTION NO. 8 - IMPEACHMENT

In Preliminary Instruction No. 7, 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.

FINAL INSTRUCTION NO. 9 - PRESUMPTION OF INNOCENCE
AND BURDEN OF PROOF

Claudia Lenore Longman is presumed innocent and, therefore, not guilty.

This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of the defendant or the fact that she is here in court. The presumption of innocence remains with Ms. Longman throughout the trial. That presumption alone is sufficient to find her not guilty. The presumption of innocence may be overcome as to Ms. Longman only if the prosecution proves, beyond a reasonable doubt, each element of the crime charged against her.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution.

Unless the prosecution proves beyond a reasonable doubt that Ms. Longman has committed each and every element of the offenses charged in the indictment against her, you must find her not guilty of those offenses.

FINAL INSTRUCTION NO. 10 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence or lack of evidence produced by the prosecution. 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 in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

FINAL INSTRUCTION NO. 11 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. Your verdict as to the defendant must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on an offense charged against her, then the defendant should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on an offense

charged, then your vote should be for a verdict of guilty against the defendant on that charge, and if all of you reach that conclusion, then the verdict of the jury must be guilty for the defendant on that charge. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of a crime charged.

Remember also that the question before you can never be whether the government wins or loses the case. The government, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

FINAL INSTRUCTION NO. 12 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

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, if the defendant is guilty, the sentence to be imposed is my responsibility. You may not consider punishment of Claudia Lenore Longman in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

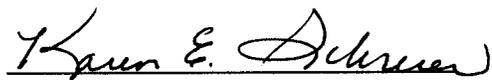
Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. **Remember that you should not tell anyone—including me—how your votes stand numerically.**

Fourth, your verdict must be based solely on the evidence and on the law in these instructions. **The verdict, whether not guilty or guilty, must be unanimous.** Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each

of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Dated July 3, 2008.

A handwritten signature in cursive script, reading "Karen E. Schreier". The signature is written in black ink and is positioned above the printed name and title.

Karen E. Schreier
Chief Judge