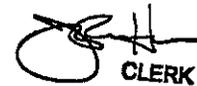


FILED

OCT 25 2007


CLERK

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EILEEN JANIS,

Defendant.

No. CR 07-50043-02-KES

**FINAL
INSTRUCTIONS
TO THE JURY**

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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 - CHARTS AND SUMMARIES

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the books, records, or other underlying evidence in the case. Those charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. 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. 3 - EMBEZZLEMENT OR THEFT FROM AN INDIAN
TRIBAL ORGANIZATION

The indictment charges that, from December 2003 through December 2004, in Pine Ridge, in the District of South Dakota, the defendant, Eileen Janis, did willfully misapply and permit to be misapplied, steal, and knowingly convert to her use and the use of another, moneys, funds, credits, assets, and other property in excess of \$1,000 which belonged to the Oglala Sioux Tribe, an Indian tribal organization, and that she aided and abetted others, namely David Rabbit and Kim Colhoff, in such acts.

Elements

For you to find Ms. Janis guilty of embezzlement or theft from an Indian tribal organization as charged in the indictment, the government must prove the following four essential elements beyond a reasonable doubt as to the defendant:

One, that from December 2003 through December 2004, in Pine Ridge, in the District of South Dakota, the defendant embezzled, stole, knowingly converted to her use or the use of another, willfully misapplied, or willfully permitted to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to the Oglala Sioux Tribe or the defendant, knowing any such moneys, funds, credits, goods, assets, or

other property to have been so embezzled, stolen, converted, misapplied, or permitted to be misapplied, did receive, conceal, or retain the same with the intent to convert it to her use or the use of another;

An act is done “knowingly” if the defendant realized what she was doing and did not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that her acts or omissions were unlawful. You may consider the evidence of the defendant’s acts and words, along with all the evidence, in deciding whether the defendant acted knowingly.

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

“Steal” means to knowingly take with the intent to deprive the owner permanently or temporarily of the rights and benefits of ownership.

“Convert” means to deliberately take or retain the money or property of another with the intent to deprive the owner of its use or benefit either temporarily or permanently. Conversion includes the misuse or abuse of property as well as use in an unauthorized manner or to an unauthorized extent.

“Misapply” means to use the funds or property of an Indian tribal organization, knowing that such use is unauthorized, unjustifiable, or wrongful. Misapplication includes the wrongful taking or use of the money or property of an Indian tribal organization by its agent, for her own benefit or use or the benefit of some other person.

“Agent” means a person authorized to act on behalf of an Indian tribal organization and includes an employee or manager.

Two, that the moneys, funds or assets belonged to an Indian tribal organization and had a value in excess of \$1,000;

Three, that the Oglala Sioux Tribe was an Indian tribal organization;
and

Counsel for the United States, counsel for the defendant, and the defendant have agreed or stipulated that the Oglala Sioux Tribe is an Indian tribal organization.

The defendant has not, by entering into this agreement or stipulation, admitted her guilt of the offense charged, and you may not draw any inference of guilt from the stipulation. The only effect of this stipulation is to present to the jury the fact that the Oglala Sioux Tribe is an Indian tribal organization.

Four, that the defendant did so with the intent to deprive the Oglala Sioux Tribe of the use or benefit of the moneys, funds, or assets.

For you to find the defendant guilty of embezzlement or theft from an Indian tribal organization as charged in the indictment, 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 - 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 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.

FINAL JURY INSTRUCTION NO. 5 - GOOD FAITH

One of the issues in this case is whether the defendant acted in good faith. Good faith is a complete defense to the charge of embezzlement or theft from an Indian tribal organization, if it is inconsistent with the defendant's voluntary, intentional and knowing intent to deprive the organization of its money, which is an essential element of the charge that the government must prove.

Evidence that the defendant acted in good faith may be considered by you, together with all the other evidence, in determining whether or not the defendant acted voluntarily, knowingly and intentionally with the intent to deprive the tribal organization of moneys. If you find that the defendant acted without the intent to deprive the tribal organization of its moneys, then you must find the defendant not guilty.

FINAL INSTRUCTION NO. 6 - DELIBERATE IGNORANCE

The element of knowledge may be satisfied by inferences drawn from proof that a defendant deliberately closed her eyes to what would otherwise have been obvious to her. A finding beyond a reasonable doubt of a conscious purpose to avoid enlightenment would permit an inference of knowledge. Stated another way, a defendant's knowledge of a fact may be inferred from willful blindness to the existence of the fact.

It is entirely up to you as to whether you find any deliberate closing of the eyes, and the inferences to be drawn from any such evidence. A showing of lack of due care or mistake is not sufficient to support a finding of willfulness or knowledge.

FINAL INSTRUCTION NO. 7 - PRESUMPTION OF INNOCENCE AND BURDEN
OF PROOF

Eileen Janis 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. Janis throughout the trial. That presumption alone is sufficient to find her not guilty. The presumption of innocence may be overcome as to Ms. Janis 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. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict. 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. Janis committed each and every element of the offense charged in the indictment against her, you must find her not guilty of that offense.

FINAL INSTRUCTION NO. 8 - 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. 9 - 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 the offense charged against her, then the defendant should have your vote for a not guilty verdict on the offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on the offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes

the defendant's guilt beyond a reasonable doubt on the offense charged, then your vote should be for a verdict of guilty against the defendant on the charge, and if all of you reach that conclusion, then the verdict of the jury must be guilty for the defendant on the 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. 10 - 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.

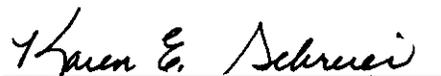
Second, if the defendant is guilty, the sentence to be imposed is my responsibility. You may not consider the punishment of Eileen Janis in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

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 October 25, 2007.

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

Karen E. Schreier
Chief Judge