

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

FILED
MAY 06 2010
[Signature]
CLERK

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CR. 08-40173

Plaintiff,

JURY

- vs -

INSTRUCTIONS

THOMAS R. KELLEY,

Defendant.

INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I 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 the 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. 2

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 just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 3

There is nothing particularly different in the way that you should consider the evidence in a trial from that in which any reasonable and careful person would treat any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case for only those purposes for which it has been received and to give such evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions of the Court. Remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence because the burden of proving guilt beyond a reasonable doubt is always assumed by the government.

INSTRUCTION NO. 4

I have mentioned the word “evidence.” The “evidence” in this case consists of the testimony of witnesses, the documents and other things received as exhibits, and any 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 will list those things again for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.

2. Objections are not evidence. Lawyers 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.

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

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 5

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.

INSTRUCTION NO. 6

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

INSTRUCTION NO. 7

If you took notes during the trial, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

INSTRUCTION NO. 8

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.

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

INSTRUCTION NO. 9

Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

INSTRUCTION NO. 10

You have heard testimony from a person described as an expert. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NO. 11

INTENTIONALLY LEFT BLANK.

INSTRUCTION NO. 12

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. 13

You must presume that the Defendant is innocent of the crimes charged against him. The Second Superseding Indictment is only a formal method of beginning a criminal case. It does not create any presumption of guilt; it is merely an accusation. The fact that a person has been indicted does not create any inference, nor is it evidence, that he is guilty of a crime. The presumption of innocence alone is sufficient to acquit the Defendant unless you as jurors are satisfied beyond a reasonable doubt of the Defendant's guilt of the crimes charged from all the evidence that has been introduced in the case against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a 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. Unless the government proves, beyond a reasonable doubt, that the Defendant committed each and every element of each crime charged against him in the Second Superseding Indictment, you must find the Defendant not guilty of that crime.

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

INSTRUCTION NO. 14

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. 15

The Second Superseding Indictment in this case charges the defendant with 23 different crimes. Count One of the Second Superseding Indictment charges that on or about November of 2004, in the District of South Dakota, the Defendant, Thomas R. Kelley, filed a false tax refund in the amount of \$27,660, in violation of 18 U.S.C. § 287.

Count Two of the Second Superseding Indictment charges that from between about March 10, 2006, and August 8, 2007, in the District of South Dakota and elsewhere, the Defendant Thomas R. Kelley corruptly endeavored to obstruct and impede the IRS in the administration of the Internal Revenue laws through the mailing of nine letters to Internal Revenue Agents and other government representatives, in violation of 26 U.S.C. § 7212(a).

Counts Three and Four of the Second Superseding Indictment charge that the Defendant Thomas R. Kelley received taxable income in the calendar years of 2001 and 2002, in the District of South Dakota, but willfully attempted to evade the payment of taxes due on all of the taxes due on such income other than that portion which his employer had withheld and remitted, all in violation of 26 U.S.C. § 7201.

Counts Five, Six and Seven of the Second Superseding Indictment charge that for the calendar years of 2003, 2004 and 2005, the Defendant Thomas R. Kelley, a resident of South Dakota, had sufficient income to be required by law to file a tax return but willfully failed to file an income tax return, all in violation of 26 U.S.C. § 7203.

Counts Eight through Sixteen and Eighteen through Twenty-Three of the Second Superseding Indictment charges that from about August 13, 2007, to about November 24, 2007, in the District of South Dakota and elsewhere, the Defendant Thomas R. Kelley, with the intent to defraud passed, uttered, presented, offered, brokered, issued, or attempted or caused the same, a false or fictitious instrument, document, or other item appearing, representing, purporting or contriving

INSTRUCTION NO. _____, continued

through scheme or artifice, to be an actual security or other financial instrument issued under the authority of the United States, or other political subdivisions of the United States, all in violation of 18 U.S.C. §§ 514 and 2. The defendant has pleaded not guilty to each of those charges.

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.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count

INSTRUCTION NO. 16

The Second Superseding Indictment charges that the offenses alleged were committed “on or about” certain dates. Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the dates alleged in the Second Superseding Indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

INSTRUCTION NO. 17

Section 287 of Title 18 of the United States Code provides, in pertinent part, that it is unlawful if a person:

makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent

INSTRUCTION NO. 18

The crime of making a false, fictitious or fraudulent claim against the United States, as charged in Count 1 of the Second Superseding Indictment, has four elements, which are:

One, the defendant made or presented to the United States Treasury Department a claim against the United States;

Two, the claim was false, fictitious or fraudulent in that the claim was for a refund of taxes to which he was not entitled;

Three, the defendant knew the claim was false, fictitious or fraudulent; and

Four, the false, fictitious or fraudulent matter was material to the United States Treasury Department.

A claim is "false" or "fictitious" if any part of it is untrue when made, and then known to be untrue by the person making it or causing it to be made. A claim is "fraudulent" if any part of it is known to be untrue, and made or caused to be made with the intent to deceive the governmental agency to which submitted.

A claim is "material" if it has a natural tendency to influence, or is capable of influencing the United States Treasury Department. However, whether a claim is "material" does not depend on whether the United States Treasury Department was actually deceived.

If all of these elements have been proved beyond a reasonable doubt as to the defendant then you must find the defendant guilty of the crime charged under Count 1 of the Second Superseding Indictment; otherwise you must find the defendant not guilty of this crime under Count 1 of the Second Superseding Indictment.

INSTRUCTION NO. 19

Section 7212(a) of Title 26 of the United States Code provides, in pertinent part, that it is unlawful if a person:

corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under [the Internal Revenue laws], or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of [the Internal Revenue laws].

INSTRUCTION NO. 20

The crime of impeding the administration of the Internal Revenue laws, as charged in Count 2 of the Second Superseding Indictment, has two elements, which are:

One, That the defendant knowingly endeavored to obstruct or impede the due administration of the Internal Revenue laws, as charged; and

Two, That the Defendant did so corruptly or forcibly.

To act “corruptly” means to act knowingly and dishonestly with the specific intent to secure an unlawful benefit either for oneself or for another. The act itself need not be unlawful.

To act “forcibly” means the actual use of physical force or threats of force, including any threatening letter or communication; and “threats of force” means threats of bodily harm to an Internal Revenue employee or members of his family.

To “endeavor” to obstruct or impede means to engage in some act, or to take some step, in a conscious attempt to obstruct or impede; and 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 Government 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. Neither is it necessary that the Government prove all of the alleged ways and means of committing the charged offense as stated in the indictment. It would be sufficient if the Government proves beyond a reasonable doubt, that the Defendant committed any one of those alleged ways and means with the corrupt intent to obstruct and impede the due administration of the Internal Revenue laws; provided, however, you must unanimously agree upon which of those alleged ways and means the Defendant corruptly committed.

If all of these elements have been proved beyond a reasonable doubt as to the defendant then

INSTRUCTION NO. 20, continued.

you must find the defendant guilty of the crime charged under Count 2 of the Second Superseding Indictment; otherwise you must find the defendant not guilty of this crime under Count 2 of the Second Superseding Indictment.

Eleventh Circuit Pattern Jury Instruction § 97 (2003 ed.)(modified); *United States v. Wilson*, 118 F.3d 228, 234 (4th Cir.1997), *cited in United States v. Waters*, 154 Fed. Appx. 549, 550 (8th Cir. 2005) ; Government's Proposed Instructions No. 5 and 6 (modified).

INSTRUCTION NO. 21

Section 7201 of Title 26 of the United States Code provides, in pertinent part, that it is unlawful if a person:

willfully attempts in any manner to evade or defeat any tax imposed by [the Internal revenue laws].

26 U.S.C. § 7201.

INSTRUCTION NO. 22

The crime of tax evasion as charged in Counts 3 and 4 of the Second Superseding Indictment has three elements, which are:

One, the defendant owed substantial income tax in addition to that which he reported on his return;

Two, the defendant attempted to evade and defeat that additional tax; and

Three, the defendant acted willfully.

To "attempt to evade or defeat" a tax involves two things: first, an intent to evade or defeat the tax; and second, some act willfully done in furtherance of such intent. So, the word "attempt" contemplates that the defendant knew and understood that, during the calendar year charged, he had some income which was taxable, and which he was required by law to report; but that he nevertheless attempted to evade or defeat all or a substantial portion of the tax on that income, by willfully failing to report all his known income which he knew he was required by law to state in his return for such year; or in some other way or manner.

To "evade and defeat" a tax means to escape paying a tax by means other than lawful avoidance.

Various schemes, subterfuges, and devices may be resorted to, in an attempt to evade or defeat a tax. The statute makes it a crime willfully to attempt, in any way or manner, to evade or defeat any income tax imposed by law.

An attempt to evade an income tax for one year is a separate offense from the attempt to evade the tax for a different year.

Even though the Second Superseding Indictment alleges a specific amount of tax due for each of the calendar years, the proof need not show the precise amount of the additional tax due. The Government is only required to establish, beyond a reasonable doubt, that the defendant attempted

INSTRUCTION NO. 22, continued

to evade a substantial income tax, whether greater or less than the amount charged in the Second Superseding Indictment.

The fact that an individual's name is signed to a return means that, unless and until outweighed by evidence in the case which leads you to a different or contrary conclusion, you may find that a filed tax return was in fact signed by the person whose name appears to be signed to it. If you find proof beyond a reasonable doubt that the defendant had signed his tax return, that is evidence from which you may, but are not required to, find or infer that the defendant had knowledge of the contents of the return.

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

If all of the elements have been proved beyond a reasonable doubt as to the defendant then you must find the defendant guilty of the crime charged under Counts 3 and 4 of the Second Superseding Indictment; otherwise you must find the defendant not guilty of this crime under Counts 3 and 4 of the Second Superseding Indictment.

INSTRUCTION NO. 23

Section 7203 of Title 26 of the United States Code provides, in pertinent part, that it is unlawful if a person:

required under [the Internal Revenue laws] to pay any estimated tax or tax, or required by [the Internal Revenue laws] or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations

INSTRUCTION NO. 24

The crime of failure to file a tax return as charged in Counts 5, 6, and 7 of the Second Superseding Indictment has three elements, which are:

One, the defendant was required to file a federal income tax return for the calendar years 2003, 2004 and 2005;

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

Three, the defendant willfully failed to file the required tax return on or before April 15, 2004 for calendar year 2003, April 15, 2005, for calendar year 2004, and April 17, 2006, for calendar year 2005.

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

A married person under sixty-five years old, filing separately, was required to file a federal income tax return for the year 2003 if he had gross income in excess of \$3,050.

A married person under sixty-five years old, filing separately, was required to file a federal income tax return for the year 2004 if he had gross income in excess of \$3,100.

A married person under sixty-five years old, filing separately, was required to file a federal income tax return for the year 2005 if he had gross income in excess of \$3,200.

Gross income includes 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; and Dividends. The person who earns the income cannot deflect the tax on it by attempting to assign or transfer the income to another person or entity.

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 Government is not required to show that a tax was due and owing or that the defendant

INSTRUCTION NO. 24, continued.

intended to evade or defeat the payment of taxes, only that he willfully failed to file a return.

If all of the elements have been proved beyond a reasonable doubt as to the defendant then you must find the defendant guilty of the crime charged under Counts 5, 6 and 7 of the Second Superseding Indictment; otherwise you must find the defendant not guilty of this crime under Counts 5, 6 and 7 of the Second Superseding Indictment.

INSTRUCTION NO. 25

Section 514 of Title 18 of the United States Code provides, in pertinent part, that it is unlawful if a person:

with the intent to defraud - . . . passes, utters, presents, offers, brokers, issues, sells, or attempts or causes the same, or with like intent possesses, within the United States . . . any false or fictitious instrument, document, or other item appearing, representing, purporting, or contriving through scheme or artifice, to be an actual security or other financial instrument issued under the authority of the United States, a foreign government, a State or other political subdivision of the United States, or an organization.

INSTRUCTION NO. 26

The crime of passing or presenting or attempting to pass or present a Fictitious Obligation as charged in Counts 8 through 16 and 18 through 23 of the Second Superseding Indictment has three elements, which are:

One, that the defendant passed, uttered, presented, offered, brokered, or issued or attempted to pass, utter, present, offer, broker, or issue a false or fictitious instrument;

Two, that the document appeared or purported to be an actual security or other financial instrument issued under the authority of the United States; and

Three, that the defendant acted with the intent to defraud.

To act with "intent to defraud" means to act with the intent to deceive or cheat, for the purpose of causing some financial loss to another or bringing about some financial gain to the defendant or another. It is not necessary, however, to prove that the United States or anyone else was in fact defrauded.

The crimes charged in Counts 8 through 16 and 18 through 23 of the Second Superseding Indictment are charged in the alternative as an attempt to pass or present a Fictitious Obligation. A person may be found guilty of an attempt if he intended to pass or present a Fictitious Obligation and voluntarily and intentionally carried out some act which was a substantial step toward passing or presenting a Fictitious Obligation.

If all of the elements have been proved beyond a reasonable doubt as to the defendant then you must find the defendant guilty of the crime charged under Counts 8 through 16 and 18 through 23 of the Second Superseding Indictment; otherwise you must find the defendant not guilty of this crime under Counts 8 through 16 and 18 through 23 of the Second Superseding Indictment.

Eighth Circuit Manual of Model Jury Instructions Criminal, §8.01 (2009)(modified); 18 U.S.C. § 514(a).

INSTRUCTION NO. 27

The Government must prove by the greater weight of the evidence that each offense charged was begun, continued or completed in the District of South Dakota.

To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. This is a lesser standard than proof beyond a reasonable doubt. The requirement of proof beyond a reasonable doubt applies to all other issues in the case.

INSTRUCTION NO. 28

One of the issues in this case is whether the defendant acted in good faith. Good faith is a complete defense to the charges in the Second Superseding Indictment if it is inconsistent with the mental state required by statute which is an element of the particular charge in the Second Superseding Indictment.

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 willfully, knowingly or with the intent to defraud.

INSTRUCTION NO. 29

With regard to Counts 5, 6 and 7 of the Second Superseding Indictment, 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 return.

In this connection, it is for you to decide whether the defendant acted in good faith- that is, whether he sincerely misunderstood the requirements of the law - or whether the defendant knew that he was required to file a return and did not do so. Mere disagreement with the law in and of itself does not constitute a good faith misunderstanding of the requirements of the law, because it is the duty of all persons to obey the law whether or not they agree with it. Also, 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. Furthermore, 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.

INSTRUCTION NO. 30

You may find that the Defendant acted knowingly if you find beyond a reasonable doubt that he was aware of a high probability that he was required by law to file annual income tax returns to any proper officer of the Internal Revenue Service, and that he was required to pay income tax on his earnings, and that he deliberately avoided learning the truth. The element of knowledge may be inferred if the Defendant deliberately closed his eyes to what would otherwise have been obvious to him. You may not find the Defendant acted “knowingly” if you find he was merely negligent, careless or mistaken as to the requirement to file annual income tax returns and pay income tax on his earnings.

INSTRUCTION NO. 31

Throughout the course of this trial you have seen and heard evidence of advice which the Defendant heard given by speakers at meetings, tape recorded lectures, and other materials. The Defendant has testified that he relied on this information in forming various opinions regarding his tax liability, the authority of the internal revenue service and the validity of the tax laws of the United States. This evidence has been admitted solely for the purpose of aiding you in determining the Defendant's state of mind - what he knew and was thinking when he acted.

You are instructed that the tax laws of the United States which the Defendant is accused of violating are valid and that internal revenue service is authorized to carry out those laws. Again, you may consider this type of evidence only for the limited purpose of determining the Defendant's knowledge, intent, willfulness and state of mind. You shall not consider any evidence to the contrary as a representation of the law in this case. All of the law which you are to apply in reaching your decision is in the Court's instructions.

INSTRUCTION NO. 32

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I will 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 agreement if you can do so without violence to individual judgment, because your 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 the Defendant is found guilty of any or all of the charges, 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, you may send a note to me through the marshal, 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 vote stands numerically.

INSTRUCTION NO. 32, continued

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. 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 upon the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	*	CR 08-40173
	*	
Plaintiff,	*	
	*	
-vs-	*	VERDICT FORM
	*	
THOMAS R. KELLEY,	*	
	*	
Defendant.	*	
	*	

Please return your verdicts by placing an "X" or "√" in the spaces provided.

VERDICT ONE

We, the jury in the above entitled and numbered case, as to the crime of crime of making a false, fictitious or fraudulent claim against the United States, as charged in Count 1 of the Second Superseding Indictment, find the Defendant, Thomas R. Kelley:

_____ NOT GUILTY

_____ GUILTY

VERDICT TWO

We, the jury in the above entitled and numbered case, as to the crime of crime of impeding the administration of the Internal Revenue laws as charged in Count 2 of the Second Superseding Indictment, find the Defendant, Thomas R. Kelley:

_____ NOT GUILTY

_____ GUILTY

If you find the Defendant "not guilty," go on to consider VERDICT THREE. If you find the Defendant "guilty," you must answer the following question and then go to VERDICT THREE:

If you found the Defendant "guilty," which of the following act or acts of mailing or causing the mailing, identified by the corresponding mailing, did you unanimously find the Defendant engaged in to obstruct or impede the Internal Revenue laws?

A letter dated March 10, 2006, regarding a "Notice of Revocation of Signatures and Affidavit in Support Thereof" to the Secretary of the Treasury, in which Kelley attempted to revoke his status as a taxpayer, claimed he is not subject to the federal income tax, and claimed that he is not required to file tax returns or fill out withholding information for his employer.

A letter dated April 4, 2006, to the IRS, accusing the IRS of fraud, and disputing a tax liability in part by claiming that he does not receive income.

A letter dated April 5, 2006, directly addressed to a specific Internal Revenue Service agent ("G.A.") at the agent's office address. Kelley's letter stated that he belongs to an organization called the "Lawmen," and warned G.A. that this group had become aware of G.A.'s supposed unlawful activities. Kelley disputed G.A.'s authority, and he threatened to report G.A. to a judge for a felony offense unless G.A. signed and returned an affidavit stating various things about supposed limits on the IRS's authority to collect taxes.

A letter on April 11, 2006, to G.A. at G.A.'s office address, to another Internal Revenue Service agent ("D.P.") at D.P.'s office address, and to IRS Commissioner Mark Everson in Washington, DC. Kelley reported to Commissioner Everson that D.P. and G.A. were trying to extort tax money from Kelley and that they lacked proper authority. Kelley also stated that he has not received income and that he is not subject to income tax. Kelley also claimed the IRS is not a governmental entity. He demanded that G.A. and D.P. should be removed from their jobs, and he threatened to sue Commissioner Everson, G.A., and D.P. in federal court if Kelley was contacted by the IRS again.

A letter on April 18, 2006, to G.A. at G.A.'s office address, D.P. at D. P. 's office address, and to IRS Commissioner Mark Everson in Washington, DC. In the letter, Kelley again stated that he has no tax liability and receives no income. Kelley also intimated that members of his organization had filed criminal charges against other IRS Operations Managers, and he threatened to file charges against D.P. and G.A. if they failed to fill out an enclosed affidavit stating various things about supposed limits on the IRS's authority to collect taxes.

A letter dated June 7, 2006, to G.A. at G.A. 's office address and to F.B.I. Agents in Kalamazoo, MI. Kelley's letter accused G.A. of fraud, extortion, and acting without lawful authority. Kelley also demanded \$200,000 in damages. He again enclosed an affidavit stating various things about supposed limits on the IRS's authority to collect taxes, and he threatened to sue G.A. in federal court and to file a criminal complaint against G.A. unless he signed the affidavit.

A letter dated June 8, 2006, to G.A. at his office address, threatening to report G.A. to a judge for his actions and telling G.A. that G.A.'s supposed unlawful actions are known to Kelley's organization, the "Lawmen."

A letter dated May 30, 2007, to a specific IRS Special Agent ("C.V.") at C.V.'s home

address. In his letter, Kelley stated, "You have absolutely no authority whatsoever to command my private papers of me. The INTERNAL REVENUE SERVICE is a fictitious artificial legal person, and not even an agency of the United States Federal government."

_____ A letter dated August 8, 2007, to the IRS-Criminal Investigation Division in Sioux Falls, SD. The letter was also sent to IRS Revenue Officer J.B. and to the Department de Hacienda in San Juan, Puerto Rico. Kelley's letter questioned the authority of the IRS, IRS employees, and IRS forms, notices and documents. Kelley claimed that the IRS is not an agency of the U.S., but instead an agency of the District of Puerto Rico. Kelley also wrote that he is "not a party made liable for the federal income tax from the Legislative intent of the 16th Amendment written by President William H. Taft" and "not subject to the exclusive jurisdiction of the federal government or any IRS District."

VERDICT THREE

We, the jury in the above entitled and numbered case, as to the crime of tax evasion, as charged in Count 3 of the Second Superseding Indictment, find the Defendant, Thomas R. Kelley:

_____ NOT GUILTY

_____ GUILTY

VERDICT FOUR

We, the jury in the above entitled and numbered case, as to the crime of tax evasion, as charged in Count 4 of the Second Superseding Indictment, find the Defendant, Thomas R. Kelley:

_____ NOT GUILTY

_____ GUILTY

VERDICT FIVE

We, the jury in the above entitled and numbered case, as to the crime of willful failure to file tax return, as charged in Count 5 of the Second Superseding Indictment, find the Defendant, Thomas R. Kelley:

_____ NOT GUILTY

_____ GUILTY

VERDICT SIX

We, the jury in the above entitled and numbered case, as to the crime of willful failure to file tax return, as charged in Count 6 of the Second Superseding Indictment, find the Defendant, Thomas R. Kelley:

_____ NOT GUILTY

_____ GUILTY

VERDICT SEVEN

We, the jury in the above entitled and numbered case, as to the crime of willful failure to file tax return, as charged in Count 7 of the Second Superseding Indictment, find the Defendant, Thomas R. Kelley:

_____ NOT GUILTY

_____ GUILTY

VERDICT EIGHT

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 8 of the Second Superseding Indictment (Private Discharging and Indemnity Bond ending in 5817-US), find the Defendant, Thomas R. Kelley:

_____ NOT GUILTY

_____ GUILTY

VERDICT NINE

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 9 of the Second Superseding Indictment (Private Discharging and Indemnity Bond ending in 5803-US), find the Defendant, Thomas R. Kelley:

_____ NOT GUILTY

_____ GUILTY

VERDICT TEN

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 10 of the Second Superseding Indictment (Private Offset Bond ending in 7037), find the Defendant, Thomas R. Kelley:

NOT GUILTY

GUILTY

VERDICT ELEVEN

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 11 of the Second Superseding Indictment (Private Offset Bond ending in 7500), find the Defendant, Thomas R. Kelley:

NOT GUILTY

GUILTY

VERDICT TWELVE

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 12 of the Second Superseding Indictment (Bonded Promissory Note ending in 3016), find the Defendant, Thomas R. Kelley:

NOT GUILTY

GUILTY

VERDICT THIRTEEN

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 13 of the Second Superseding Indictment (Bonded Promissory Note ending in 6528), find the Defendant, Thomas R. Kelley:

NOT GUILTY

GUILTY

VERDICT FOURTEEN

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 14 of the Second Superseding Indictment (Private Discharging and Indemnity Bond ending in 5700-US), find the Defendant, Thomas R. Kelley:

NOT GUILTY

GUILTY

VERDICT FIFTEEN

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 15 of the Second Superseding Indictment (Bonded Promissory Note ending in 6849), find the Defendant, Thomas R. Kelley:

NOT GUILTY

GUILTY

VERDICT SIXTEEN

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 16 of the Second Superseding Indictment (Private Offset Bond ending in 6535), find the Defendant, Thomas R. Kelley:

NOT GUILTY

GUILTY

VERDICT SEVENTEEN

COUNT 17 WAS DISMISSED.

VERDICT EIGHTEEN

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 18 of the Second Superseding Indictment (Private Offset Bond ending in 3085), find the Defendant, Thomas R. Kelley:

NOT GUILTY

GUILTY

VERDICT NINETEEN

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 19 of the Second Superseding Indictment (Bonded Promissory Note ending in 6887), find the Defendant, Thomas R. Kelley:

NOT GUILTY

GUILTY

VERDICT TWENTY

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 20 of the Second Superseding Indictment (Private Offset Bond ending in 6856), find the Defendant, Thomas R. Kelley:

NOT GUILTY

GUILTY

VERDICT TWENTY-ONE

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 21 of the Second Superseding Indictment (Bonded Promissory Note ending in 0575), find the Defendant, Thomas R. Kelley:

NOT GUILTY

GUILTY

VERDICT TWENTY-TWO

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 22 of the Second Superseding Indictment (Private Offset Bond ending in 3283), find the Defendant, Thomas R. Kelley:

_____ NOT GUILTY

_____ GUILTY

VERDICT TWENTY-THREE

We, the jury in the above entitled and numbered case, as to the crime of passing or presenting or attempting to pass or present a Fictitious Obligation, as charged in Count 23 of the Second Superseding Indictment (Bonded Promissory Note ending in 0506), find the Defendant, Thomas R. Kelley:

_____ NOT GUILTY

_____ GUILTY

Have your foreperson sign and date the Verdict Form below.

Dated this _____ day of May, 2010.

Foreperson