UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. RANDY GARRISS, Defendant.	**CR 17-40058** **FINAL JURY INSTRUCTIONS**

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.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 3.01 (2021).

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.

You should not be influenced by any person's race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, disability, or economic circumstances. You must decide the case solely on the evidence and the law before you and must not be influenced by any personal likes or dislikes, opinions, prejudices, sympathy, or biases, including unconscious bias. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may express without conscious awareness, control, or intention. Like conscious bias, unconscious bias, too, can affect how we evaluate information and make decisions.

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.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 3.02 (as revised 2021).

INSTRUCTION NO. 3

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.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 3.03 (2021).

INSTRUCTION NO. 4

As I instructed in Preliminary Instruction No. 3, Mr. Garriss decided to represent himself in this trial and not to use the services of a lawyer. He has a constitutional right to do that. This decision must not affect your consideration and your decision whether he is not guilty or guilty.

Because Mr. Garriss decided to act as his own lawyer, you heard him speak during the trial. I want to remind you that when Mr. Garriss spoke in opening statement, closing argument, questioning witnesses, making objections, and arguing legal issues to the court, he was acting as a lawyer in the case, and his words are not evidence. The only evidence in this case comes from witnesses who testify under oath on the witness stand and from exhibits that are admitted. Mr. Garriss's testimony under oath on the witness stand is evidence.

Although Mr. Garriss chose to represent himself, the court appointed Mr. Ryan Kolbeck to assist Mr. Garriss as standby counsel. This is standard procedure. When Mr. Kolbeck spoke during the trial, his words were not evidence.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 2.23 (2021).

INSTRUCTION NO. 5

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. Use the evidence only for those purposes for which it has been received and give the 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.

O'Malley, Grenig and Lee, *Federal Jury Practice and Instructions*, § 12.02 (6th ed. 2008) (modified).

INSTRUCTION NO. 6

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 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.

O'Malley, Grenig and Lee, *Federal Jury Practice and Instructions*, § 12.04 (6th ed. 2008) (modified).

INSTRUCTION NO. 7

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.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 3.04 (2021).

INSTRUCTION NO. 8

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 proceedings. 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.

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.

United States v. Rhodes, 631 F.2d 43, 46 n.3 (5th Cir. 1980); O'Malley, Grenig, and Lee, *Federal Jury Practice and Instructions*, § 12.07 (6th ed. 2008).

INSTRUCTION NO. 9

You have heard testimony from persons described as experts. 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.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 4.10 (2021).

INSTRUCTION NO. 10

You have heard evidence that witness Loren Brown has pleaded guilty to a crime that arose out of the same events for which the Defendant is on trial here. You must not consider that guilty plea as any evidence of this Defendant's guilt. You may consider Loren Brown's guilty plea only for the purpose of determining how much, if at all, to rely upon his testimony.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 2.19 (2021).

INSTRUCTION NO. 11

You have seen and heard evidence that Ted Nelson and Steve Nelson were found guilty of crimes which arose out some of the same events for which the Defendant is on trial here. You must not consider those convictions as any evidence of this Defendant's guilt.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 2.19 (2021) (modified).

INSTRUCTION NO. 12

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.

O'Malley, Grenig and Lee, *Federal Jury Practice and Instructions*, § 14.16 (6th ed. 2008).

INSTRUCTION NO. 13

The Superseding Indictment in this case charges two crimes against the Defendant, Randy Garriss.

Count 1 of the Superseding Indictment charges that beginning in approximately April 20, 2004 and continuing until April 13, 2021, in the District of South Dakota and elsewhere, the Defendant committed the crime of conspiracy to defraud the United States, in violation of 18 U.S.C. § 371.

Count 2 of the Superseding Indictment charges that beginning in approximately April 20, 2004 and continuing until approximately February 22, 2016, in the District of South Dakota, Defendant attempted to interfere with the due administration of the internal revenue laws in violation of 26 U.S.C. § 7212(a).

The Defendant has pleaded not guilty to these charges. There is no burden upon the Defendant to prove that he is innocent of the charges against him.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 3.06 (2021) (modified).

INSTRUCTION NO. 14

You must presume that the Defendant is innocent of the crimes charged against him. The 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 government 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 an offense charged against him in the Superseding Indictment, you must find the Defendant not guilty of that offense.

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

Eighth Circuit Manual of Model Jury Instructions Criminal, § 3.07 (2021) (modified); O'Malley, Grenig and Lee, *Federal Jury Practice and Instructions*, § 12.10 (6th ed. 2008) (modified).

INSTRUCTION NO. 15

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 must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in life's most important decisions. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 3.11 (2021) (modified); O'Malley, Grenig and Lee, *Federal Jury Practice and Instructions*, § 12.10 (6th ed. 2008) (modified).

INSTRUCTION NO. 16

The Superseding Indictment charges that the offenses alleged were committed on approximate dates. Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed on a date reasonably near the dates alleged in the Superseding Indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

O'Malley, Grenig and Lee, *Federal Jury Practice and Instructions*, § 13.05 (6th ed. 2008) (modified).

INSTRUCTION NO. 17

It is a crime for two or more people to agree to commit a crime. The crime of conspiracy to defraud the United States, as charged in Count 1 of the Superseding Indictment, has four elements:

One, beginning on approximately April 20, 2004, and continuing until April 13, 2021, two or more persons reached an agreement or came to an understanding to commit the crime of defrauding the United States by impeding, impairing, obstructing, or defeating the lawful governmental functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment, or collection of the revenue, to wit: income taxes owed by Theodore "Ted" Nelson and Steven "Steve" Nelson;

Two, the Defendant voluntarily and intentionally joined in the agreement, either at the time it was first reached or at some later time while it was still in effect;

Three, at the time the Defendant joined in the agreement, the Defendant knew the purpose of the agreement; and

Four, while the agreement was in effect, a person or persons who had joined in the agreement knowingly did one or more acts for the purpose of carrying out or carrying forward the agreement.

The immediately following Instruction further explains these elements.

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; otherwise you must find the Defendant not guilty of this crime under Count 1.

18 U.S.C. § 371; *United States v. Flynn*, 969 F.3d 873, 881 (8th Cir. 2020) (citing *Dennis v. United States*, 384 U.S. 855, 861 (1966)); *Eighth Circuit Manual of Model Jury Instructions Criminal*, §§ 5.06A-1, 3.09; Government's Proposed Instruction No. 1 (modified).

INSTRUCTION NO. 18

Element One –

Element One of Count 1 requires that two or more persons reached an agreement or came to an understanding to commit the crime of defrauding the United States by impeding, impairing, obstructing, or defeating the lawful governmental functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment, or collection of the revenue, to wit: income taxes owed by Theodore "Ted" Nelson and Steven "Steve" Nelson.

For you to find that the government has proved a conspiracy, you must unanimously find that there was an agreement to act for this purpose.

The agreement between two or more persons to commit the crime of defrauding the United States does not need to be a formal agreement or be in writing. A verbal or oral understanding can be sufficient to establish an agreement.

It does not matter whether the crime of defrauding the United States was actually committed or whether the alleged participants in the agreement actually succeeded in accomplishing their unlawful plan.

The agreement may last a long time or a short time. The members of an agreement do not all have to join it at the same time. You may find that someone joined the agreement even if you find that person did not know all of the details of the agreement.

A person may be a member of the agreement even if the person does not know all of the other members of the agreement or the person agreed to play only a minor part in the agreement.

Element Two –

Element Two of Count 1 requires that the Defendant voluntarily and intentionally joined the agreement.

If you have determined that two or more people reached an agreement to commit the crime of defrauding the United States, you must next decide whether the Defendant voluntarily and

intentionally joined that agreement, either at the time it was first formed or at some later time while it was still in effect.

Earlier, in deciding whether two or more persons reached an agreement to commit the crime of defrauding the United States, you could consider the acts and statements of each person alleged to be part of the agreement. Now, in deciding whether the Defendant joined the agreement, you may consider only the acts and statements of the Defendant.

A person joins an agreement to commit the crime of defrauding the United States by voluntarily and intentionally participating in the unlawful plan with the intent to further the crime of defrauding the United States. It is not necessary for you to find that the Defendant knew all the details of the unlawful plan.

It is not necessary for you to find that the Defendant reached an agreement with every person you determine was a participant in the agreement.

Evidence that a person was present at the scene of an event, or acted in the same way as others or associated with others, does not, alone, prove that the person joined a conspiracy. A person who has no knowledge of a conspiracy, but who happens to act in a way that advances the purpose of the conspiracy, does not thereby become a member. A person's mere knowledge of the existence of a conspiracy, or mere knowledge that an objective of a conspiracy was being considered or attempted, or mere approval of the purpose of the conspiracy, is not enough to prove that the person joined in a conspiracy.

The agreement may last a long time or a short time. The members of an agreement do not all have to join it at the same time. You may find that the Defendant joined the agreement even if you find that the Defendant did not know all of the details of the agreement.

A person may be a member of the agreement even if the person does not know all of the other members of the agreement or the person agreed to play only a minor part in the agreement.

Element Three –

Element Three of Count 1 requires that the Defendant knew the purpose of the agreement at the time the Defendant joined the agreement.

A person knows the purpose of the agreement if he is aware of the agreement and does not participate in it through ignorance, mistake, carelessness, negligence, or accident. It is seldom, if ever, possible to determine directly what was in the Defendant's mind. Thus, the Defendant's knowledge of the agreement and its purpose can be proved like anything else, from reasonable conclusions drawn from the evidence.

It is not enough that the Defendant and other alleged participants in the agreement to commit the crime of defrauding the United States simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. The Defendant must have known of the existence and purpose of the agreement. Without such knowledge, the Defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy.

Element Four –

Element Four of Count 1 requires that one of the persons who joined the agreement took some act for the purpose of carrying out or carrying forward the agreement.

The Defendant does not have to personally commit an act in furtherance of the agreement, know about it, or witness it. It makes no difference which of the participants in the agreement did the act. This is because a conspiracy is a kind of "partnership" so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts of every other member done to further their scheme.

The act done in furtherance of the agreement does not have to be an unlawful act. The act may be perfectly innocent in itself.

It is not necessary that the government prove that more than one act was done in furtherance of the agreement. It is sufficient if the government proves one such act; but in that event, in order to return a verdict of guilty, you must all agree which act was done.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 5.06A-2 (modified); Government's Proposed Instruction No. 1 (modified).

INSTRUCTION NO. 19

If you determine that an agreement existed and the Defendant joined the agreement, then acts and statements knowingly done or made by a member of the agreement during the existence of the agreement and in furtherance of it, may be considered by you as evidence pertaining to the Defendant, even though the acts and statements were done or made in the absence of and without the knowledge of the Defendant. This includes acts done or statements made before the Defendant joined the agreement, because a person who knowingly, voluntarily and intentionally joins an existing conspiracy becomes responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

Acts and statements which are made before the conspiracy began or after it ended are admissible only against the person making them and should not be considered by you against any other defendant.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 5.06D.

INSTRUCTION NO. 20

The crime of attempt to interfere with the administration of Internal Revenue laws, as charged in Count 2 of the Superseding Indictment, has four elements:

One, the Defendant acted in any way corruptly;

Two, the Defendant obstructed or impeded, or endeavored to obstruct or impede, the due administration of the Internal Revenue laws;

Three, a "nexus" existed between the Defendant's conduct and a particular tax-related proceeding or administrative action; and

Four, the Defendant acted with knowledge of a currently-pending or reasonably foreseeable governmental tax-related action or proceeding.

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 2; otherwise you must find the Defendant not guilty of this crime under Count 2.

To act "corruptly" is to act with the intent to secure an unlawful advantage or benefit either for one's self or another.

To "obstruct or impede" means to hinder or prevent from progress; to slow or stop progress; or to make accomplishment difficult and slow. It is not necessary for the government to prove that the "endeavor" was successful or, in fact, achieved the desired result.

The "due administration of the Internal Revenue laws" for purposes of § 7212(a) means a targeted governmental tax-related action or proceeding. Collections activity by an IRS revenue officer would qualify under this definition. But it does not include routine administrative procedures that are near-universally applied to all taxpayers, such as the ordinary processing of tax returns.

To prove a "nexus," there must be a relationship in time, causation, or logic between the Defendant's obstructive conduct and the particular tax-related proceeding or administrative action or proceeding.

26 U.S.C. § 7212(a); *Marinello v. United States*, 138 S.Ct. 1101, 1104, 1106, 1108, 1109 (2018) ("targeted governmental tax-related proceeding;" "corruptly;" "obstruct or impede;" "due administration of Internal Revenue Code;" "nexus"); *United States v. Prelogar*, 996 F.3d 526, 531, 533-34 (8th Cir. 2021) ("targeted governmental tax-related proceeding;" "targeted administrative action;" "knowledge of a currently-pending or reasonably foreseeable proceeding;" finding "specific collections activities" to fall within the definition of "due Administration of the Internal Revenue Code"); *United States v. Beckham*, 917 F.3d 1059, 1064 (8th Cir. 2019) (stating that *Marinello* added two elements; "in any way corruptly"); *United States v. Giambalvo*, 810 F.3d 1086, 1098-99 (8th Cir. 2016) ("corruptly"); *United States v. Williamson*, 746 F.3d 987, 990 (10th Cir. 2014) ("obstruct or impede"); *United States v. Dykstra*, 991 F.2d 450, 453 (8th Cir. 1993) ("corruptly"); *United States v. Williams*, 644 F.2d 696, 699 n.14 (8th Cir. 1981), *superseded in statute on other grounds as recognized in United States v. Beckham*, 917 F.3d 1059 (8th Cir. 2019) (endeavor need not be successful); Government's Proposed Jury Instruction No. 3 (modified); *Eighth Circuit Manual of Model Jury Instructions Criminal*, § 3.09 (2021).

INSTRUCTION NO. 21

Randy Garriss's theory of defense is that he acted in good faith. While the term good faith has no precise definition, it means, among other things, a belief or opinion honestly held, an absence of malice or ill will, and an intention to comply with known legal duties.

Good faith is a complete defense to the charge of conspiracy to defraud the United States as charged in Count 1 if it is inconsistent with an intent to defraud.

Good faith is a complete defense to the charge of attempt to interfere with administration of internal revenue laws, as charged in Count 2, if it is inconsistent with acting corruptly or acting with the intent to secure an unlawful advantage or benefit for himself or someone else.

Mere disagreement with the law in and of itself, however, does not constitute a good-faith misunderstanding of the requirements of the law. That is because it is the duty of all persons to obey the law whether or not they agree with it. The United States federal income tax is authorized by the United States Constitution, it has been implemented by the Congress of the United States, and it has been found to be constitutional by the United States Supreme Court.

The burden of proving good faith does not rest with the Defendant because the Defendant does not have an obligation to prove anything in this case. It is the Government's burden to prove to you, beyond a reasonable doubt, all of the essential elements of the offenses charged. If the evidence in the case leaves you with a reasonable doubt as to whether the Defendant acted in good faith with respect to any count, you must find him not guilty as to that count.

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 the requirements of the law and chose not to comply with those requirements.

Eighth Circuit Manual of Model Criminal Jury Instructions, §§ 9.08A and 9.08B; O'Malley, Grenig and Lee, *Federal Jury Practice and Instructions*, § 40.16 (6th ed. 2008) (modified); *United States v. Parshall*, 757 F.2d 211 (8th Cir. 1985).

INSTRUCTION NO. 22

The government may prove that the defendant acted "knowingly" by proving, beyond a reasonable doubt, that the defendant deliberately closed his eyes to what would otherwise have been obvious to him. No one can avoid responsibility for a crime by deliberately ignoring what is obvious. A finding beyond a reasonable doubt of an intent of the defendant to avoid knowledge or enlightenment would permit you to find knowledge. Stated another way, a person's knowledge of a particular fact may be shown from a deliberate or intentional ignorance or deliberate or intentional blindness to the existence of that fact. A willfully blind defendant is one who takes deliberate action to avoid confirming a high probability of wrongdoing.

It is, of course, entirely up to you as to whether you find any deliberate ignorance or deliberate closing of the eyes and any inferences to be drawn from any such evidence.

You may not conclude that the defendant had knowledge, however, from proof of a mistake, negligence, carelessness, recklessness, or a belief in an inaccurate position.

Eighth Circuit Manual of Model Criminal Jury Instructions, § 7.04 (modified); *United States v. Hansen*, 791 F.3d 863 (8th Cir. 2015); Government's Proposed Instruction No. 8.

INSTRUCTION NO. 23

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.

Eighth Circuit Manual of Model Criminal Jury Instructions, § 7.05 (2021).

INSTRUCTION NO. 24

An act is done knowingly if the Defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the Defendant knew that his actions were unlawful. You may consider evidence of the Defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 7.03 (2021).

INSTRUCTION NO. 25

You will remember that certain schedules, summaries, and charts were admitted in evidence. You may use those schedules, summaries and charts as evidence, even though the underlying documents and records are not here.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 4.12 (2021).

INSTRUCTION NO. 26

The fact that an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

26 U.S.C. § 6064.

INSTRUCTION NO. 27

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 a verdict–whether guilty or not guilty–must be unanimous.

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

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

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

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

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

Finally, the verdict form is simply the written notice of the decisions that you reach in this case. You will take this form to the jury room, and when each of you has agreed upon the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal that you are ready to return to the courtroom.

Eighth Circuit Manual of Model Jury Instructions Criminal, § 3.12 (2021).

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. RANDY GARRISS, Defendant.	**CR 17-40058** **VERDICT FORM**

We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find the defendant, Randy Garriss, _____ (fill in either "not guilty" or "guilty") of Conspiracy to Defraud the United States as charged in Count 1 of the Superseding Indictment.

2. We find the defendant, Randy Garriss, _____ (fill in either "not guilty" or "guilty") of Attempt to Interfere with Administration of Internal Revenue Laws as charged in Count 2 of the Superseding Indictment.

Dated this _____ day of June, 2022.

_____

FOREPERSON