

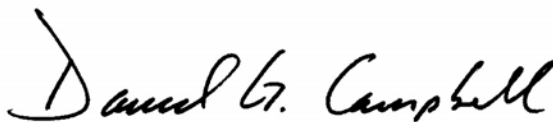
UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America,)	No. CR10-0400 PHX DGC
)	
Plaintiff,)	
)	
v.)	
)	
Janice Sue Taylor,)	
)	
Defendant.)	
_____)	

COURT'S PROPOSED FINAL JURY INSTRUCTIONS

DATED: April 1, 2011



David G. Campbell
United States District Judge

3.1 DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return – that is a matter entirely up to you.

**3.2 CHARGE AGAINST DEFENDANT NOT
EVIDENCE – PRESUMPTION OF
INNOCENCE – BURDEN OF PROOF**

The indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charge beyond a reasonable doubt.

3.3 DEFENDANT'S DECISION NOT TO TESTIFY (?)

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

3.4 DEFENDANT'S DECISION TO TESTIFY (?)

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

3.5 REASONABLE DOUBT – DEFINED

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

3.6 WHAT IS EVIDENCE

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which all the lawyers have stipulated.

3.7 WHAT IS NOT EVIDENCE

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the question, the objection, or the court's ruling on it.
3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.
4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

3.8 DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

3.9 CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the witness's opportunity and ability to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case, if any;
5. the witness's bias or prejudice, if any;
6. whether other evidence contradicted the witness's testimony;
7. the reasonableness of the witness's testimony in light of all the evidence; and
8. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

3.10 ACTIVITIES NOT CHARGED

You are here only to determine whether the defendant is guilty or not guilty of the charges in the indictment. The defendant is not on trial for any conduct or offense not charged in the indictment.

**3.11 SEPARATE CONSIDERATION OF MULTIPLE COUNTS --
SINGLE DEFENDANT**

A separate crime is charged against the defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

3.16 INTENT TO DEFRAUD -- DEFINED (?)

An intent to defraud is an intent to deceive or cheat.

4.1 STATEMENTS BY DEFENDANT

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the defendant may have made it.

4.3 OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT

You have heard evidence that the defendant committed other [crimes] [wrongs] [acts] not charged here. You may consider this evidence only for its bearing, if any, on the question of the defendant's [intent] [motive] [opportunity] [preparation] [plan] [knowledge] [identity] [absence of mistake] [absence of accident] and for no other purpose. [You may not consider this evidence as evidence of guilt of the crime for which the defendant is now on trial.]

4.14 OPINION EVIDENCE, EXPERT WITNESS

You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for their opinions.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

4.16 CHARTS AND SUMMARIES IN EVIDENCE

Certain charts and summaries have been admitted in evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

STIPULATED INSTRUCTION NO. 1

The Charge - Presumption of Innocence

This is a criminal case brought by the United States government. The government charges defendant with four counts of Tax Evasion in violation of Title 26, United States Code, Section 7201 and four counts of Willful Failure to File Tax Return, in violation of Title 26, United States Code, Section 7203. The charges against the defendant are contained in the Indictment. The Indictment is simply the description of the charges made by the government against the defendant; it is not evidence of anything.

The defendant has pled not guilty to the charges and is presumed innocent unless and until proven guilty beyond a reasonable doubt. The defendant has the right to remain silent and never has to prove innocence or present any evidence.

STIPULATED INSTRUCTION NO. 2

“On or About” - Explained

The Indictment charges that the offenses were committed "on or about" certain dates.

Although it is necessary for the United States to prove beyond a reasonable doubt that the offenses were committed on dates reasonably near the dates alleged in the Indictment, it is not necessary for the United States to prove that the offenses were committed precisely on the dates charged.

GOVERNMENT'S REQUESTED INSTRUCTION NO. 2

Attempt to Evade and Defeat Assessment of Tax

The defendant is charged in Counts One through Four of the Indictment with attempting to evade and defeat the assessment of tax for calendar years 2003-2006, in violation of Section 7201 of Title 26 of the United States Code. In order for the defendant to be found guilty of these charges, the government must prove each of the following elements beyond a reasonable doubt with respect to each count:

First, the defendant owed more federal income tax for the calendar year charged in that count than was declared due on her income tax return for each respective year;

Second, the defendant knew that more federal income tax was owed than was declared due on any tax returns defendant filed for each respective year;

Third, the defendant made an affirmative attempt to evade or defeat the assessment of income tax for each respective year; and

Fourth, in attempting to evade or defeat the assessment of the additional tax for each respective year, the defendant acted willfully.

STIPULATED INSTRUCTION NO. 4

Willful Failure to File Tax Return

The defendant is charged in Counts 5-8 of the indictment with willful failure to file an income tax return in violation of Section 7203 of Title 26 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant was required to file a return for the calendar years 2003 through 2006;

Second, the defendant failed to file an income tax return by on or about April 15 of the charged calendar year, as required by Title 26 of the United States Code; and

Third, in failing to do so, the defendant acted willfully.

9.42 WILLFULLY—DEFINED
(26 U.S.C. §§ 7201, 7203, 7206, 7207)

In order to prove that the defendant acted “willfully,” the government must prove beyond a reasonable doubt that the defendant knew federal tax law imposed a duty on her, and the defendant intentionally and voluntarily violated that duty.

A defendant who acts on a good faith misunderstanding as to the requirements of the law does not act willfully even if her understanding of the law is wrong or unreasonable. Nevertheless, merely disagreeing with the law does not constitute a good faith misunderstanding of the law because all persons have a duty to obey the law whether or not they agree with it. Thus, in order to prove that the defendant acted willfully, the government must prove beyond a reasonable doubt that the defendant did not have a good faith belief that she was complying with the law.

STIPULATED INSTRUCTION NO. 3

Knowingly Defined

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of a defendant's words, acts, or omissions, along with all the other evidence, in deciding whether a defendant acted knowingly.

GOVERNMENT’S REQUESTED INSTRUCTION NO. 3

Existence of a Tax Deficiency

A tax due and owing may be ascertained in three ways: by the taxpayer reporting the amount of tax due and owing; by the IRS examining the taxpayer and assessing the tax; or if the taxpayer fails to file a return, and the government can prove a tax deficiency, the deficiency arises on the date the return was due.

If the IRS did a tax examination of the defendant taxpayer, and assessed additional tax, a certificate of assessment and payment is “adequate evidence” of a tax liability.

The government need not prove the specific amount of tax due for each calendar year alleged in the Indictment. The government need only prove that the defendant willfully attempted to evade any tax during the years in question.

GOVERNMENT'S REQUESTED INSTRUCTION NO. 4 (?)

Affirmative Act – Defined

A failure to act is not an attempt to evade one's assessment or payment of taxes. But any affirmative act, "the likely effect of which would be to mislead or to conceal" one's tax liability or assets, is an attempt to evade taxes.

An affirmative "willful attempt" or act to evade or defeat income tax may be inferred from conduct such as keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind, and any other conduct the likely effect of which would be to mislead or to conceal.

Other examples of affirmative acts of evasion of assessment or payment of tax include placing assets in the name of others, causing debts to be paid through and in the name of others, using bank accounts in the names of others, transacting business in cash or cashier's checks, and paying other creditors instead of the government.

GOVERNMENT'S REQUESTED INSTRUCTION NO. 5 (?)

Substance over Form

Where an individual exercises complete dominion and control over income and its sources, the tax law generally attributes the income to the individual rather than to a nominal owner. The Tax Code taxes legal entities such as trusts and corporations separately from their owners. But if the entities lack economic substance or serve as the alter ego of an individual taxpayer who uses them to evade taxes, the tax burden falls on the individual taxpayer. This is a basic principle of federal income-tax law. Tax consequences flow from the substance rather than the form of a transaction, and defendant's actual control of the property, rather than what the records reflect, is what controls for federal tax purposes.

Therefore, a trust or corporation that lacks economic substance and has no purpose other than tax avoidance is not recognized for Federal tax purposes. Generally, the law will not recognize a trust for Federal tax purposes if the creator keeps substantially unfettered powers of disposition or beneficial enjoyment of trust property. Federal tax law will disregard such an entity for Federal tax purposes, even if it is valid under State law.

GOVERNMENT’S REQUESTED INSTRUCTION NO. 6 (?)

Income Defined

The term “income” is a broad concept that includes any economic gain from whatever source. The essence of income is the accrual of some gain, profit, or benefit to the taxpayer.

Federal income taxes are levied upon income derived from compensation for personal services of every kind and in whatever form paid, whether as wages, commissions, or money earned for performing services, or dealings in property. The tax is also levied upon profits earned from any business, regardless of its nature -- legal or illegal - and from interest, dividends, rents and the like. In short, the term “gross income” means all income from whatever source unless it is specifically excluded by law.

7.1 DUTY TO DELIBERATE

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

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

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

7.2 CONSIDERATION OF EVIDENCE -- CONDUCT OF THE JURY

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately.

7.3 USE OF NOTES

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

7.4 JURY CONSIDERATION OF PUNISHMENT

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

7.5 VERDICT FORM

A verdict form has been prepared for you. [Any explanation of the verdict form may be given at this time.] After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the Court that you are ready to return to the courtroom.

7.6 COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing, or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone – including me – how the jury stands, numerically or otherwise, on the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.