

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA

v.

WILLIE HARRIS,
WILLIAM A. SMITH, and
ROOSEVELT POWELL.

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CASE NO. 2:06 CR 197 PS

FINAL JURY INSTRUCTIONS

Dated: September 24, 2007

s/ Philip P. Simon
Philip P. Simon, Judge
United States District Court

INSTRUCTION NO. 1

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury, your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

You must perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part on what the facts are or what your verdict should be.

INSTRUCTION NO. 2

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations. A stipulation is an agreement between both sides that certain facts are true.

INSTRUCTION NO. 3

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness's age;
- the witness's intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

INSTRUCTION NO. 4

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

INSTRUCTION NO. 5

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

INSTRUCTION NO. 6

Certain things are not evidence. I will list them for you:

First, testimony and exhibits that I struck from the record, or that I told you to disregard, are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

INSTRUCTION NO. 7

It is proper for an attorney to interview any witness in preparation for trial.

INSTRUCTION NO. 8

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

INSTRUCTION NUMBER 9

The indictment in this case is the formal method of accusing the defendant of an offense and placing the defendant on trial. It is not evidence against the defendant and does not create any inference of guilt.

The defendant, WILLIE HARRIS, is charged in Count One with wire fraud; Count Two with conspiracy to commit theft of funds from Lake County, Indiana; Count Three with conspiracy to defraud the United States and the Internal Revenue Service, and; Count Six, signing a false individual income tax return for the tax year 2001. Defendant Harris has pleaded not guilty to the charges.

The defendant WILLIAM SMITH is charged in Count One with wire fraud; Count Three with conspiracy to defraud the United States and the Internal Revenue Service, and; Count Four with signing a false individual income tax return for the tax year 2001. Defendant Smith has pleaded not guilty to the charges.

The defendant, ROOSEVELT POWELL is charged in Count One with wire fraud, Count Two with conspiracy to commit theft of funds from Lake County, Indiana; Count Three with conspiracy to defraud the United States and the Internal Revenue Service, and; Count Five with signing a false individual tax return for the tax year 2001. Defendant Powell has pleaded not guilty to the charges.

INSTRUCTION NUMBER 10

The defendant is presumed to be innocent of each of the charges. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

INSTRUCTION NO. 11

A defendant has an absolute right not to testify. The fact that a defendant did not testify should not be considered by you in any way in arriving at your verdict.

INSTRUCTION NUMBER 12

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness' qualifications, and all of the other evidence in the case.

INSTRUCTION NO. 13

You have heard evidence that before the trial witnesses made statements that may be inconsistent with the witnesses' testimony here in court. If you find that they are inconsistent, you may consider the earlier statements in deciding the truthfulness and accuracy of those witness' testimony in this trial. If those statements were not made under oath, you may not use them as evidence of the truth of the matters contained in those prior statements. If those statements were made under oath, such as those made before a grand jury, you may also consider them as evidence of the truth of the matters contained in those prior statements.

INSTRUCTION NO. 14

You have heard testimony from Jojuana Meeks and Lee Christakis who received immunity; that is, a promise from the government that any testimony or other information they provided would not be used against them in a criminal case.

You may give their testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

INSTRUCTION NO. 15

All of the defendants are charged in Count One of the indictment with wire fraud in violation of Title 18, United States Code, Section 1343 which provides in pertinent part:

Whoever, having devised or intending to devise any scheme or artifice to defraud, transmits or causes to be transmitted by means of a wire communication in interstate commerce, any writings, signs, signals, pictures or sounds for the purpose of executing such scheme or artifice

shall be guilty of an offense against the United States.

INSTRUCTION NO. 16

To sustain the charge of wire fraud, the government must prove the following propositions:

First, that the defendant knowingly devised or participated in the scheme to defraud or to obtain money or property by means of false pretenses, representations or promises, as described in Count One of the indictment;

Second, that the defendant did so knowingly and with the intent to defraud; and

Third, that for the purpose of carrying out the scheme or attempting to do so, the defendant used or caused the use of interstate wire communications to take place in the manner charged in the particular count.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

INSTRUCTION NO. 17

A scheme is a plan or course of action formed with the intent to accomplish some purpose.

In considering whether the government has proven a scheme to defraud or obtain money or property by means of false pretenses, representations or promises, it is essential that one or more of the false pretenses, representations, promises and acts charged in the portion of the indictment describing the scheme be proved establishing the existence of the scheme beyond a reasonable doubt. However, the government is not required to prove all of them.

A scheme to defraud is a scheme that is intended to deceive or cheat another and to obtain money or property or cause the potential loss of money or property to another.

INSTRUCTION NO. 18

The phrase “intent to defraud” means that the acts charged were done knowingly with the intent to deceive or cheat the victim in order to cause a gain of money or property to a defendant or the potential loss of money or property to another.

INSTRUCTION NO. 19

When the word “knowingly” or the phrase “the defendant knew” is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident. Knowledge may be proved by the defendant’s conduct, and by all the facts and circumstances surrounding the case.

INSTRUCTION NO. 20

The wire fraud statute can be violated whether or not there is any loss or damage to the victim of the crime or gain to the defendant.

INSTRUCTION NO. 21

The government must prove interstate communication facilities were used to carry out the scheme, or was incidental to an essential part of the scheme.

In order to cause interstate wire communications to take place, a defendant need not actually intend that use to take place. You must find that the defendant knew this use would actually occur, or that the defendant knew that it would occur in the ordinary course of business, or that the defendant knew facts from which that use could reasonably have been foreseen. However, the government does not have to prove that a defendant knew that the wire communication was of an interstate nature.

The defendant need not actually or personally use interstate communication facilities.

Although an item communicated interstate need not itself contain a fraudulent representation or promise or a request for money, it must further or attempt to further the scheme.

INSTRUCTION NO. 22

An electronic transfer of money across state boundaries constitutes a transmission by means of wire communication in interstate commerce within the meaning of the wire fraud statute.

INSTRUCTION NO. 23

Count Two charges that from late December 2000 and continuing to on or about October 9, 2001, WILLIE HARRIS and ROOSEVELT POWELL conspired to commit a federal offense, namely, theft of funds from Lake County, Indiana government, in violation of Title 18, United States Code, Section 371 which provides:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons does any act to effect the object of the conspiracy, each . . . is guilty of a crime.

INSTRUCTION NO. 24

A conspiracy is an agreement between two or more persons to accomplish an unlawful purpose. To sustain the charge of conspiracy as charged in Count Two, the government must prove:

First, that the conspiracy as charged in Count Two existed;

Second, that the defendant knowingly became a member of the conspiracy with an intention to further the conspiracy; and

Third, that an overt act was committed by at least one conspirator in furtherance of the conspiracy.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

A conspiracy may be established even if its purpose was not accomplished.

It is not necessary that all the overt acts charged in the indictment be proved, and the overt act proved may itself be a lawful act.

To be a member of the conspiracy, the defendant need not join at the beginning or know all the other members or the means by which its purpose was to be accomplished. The government must prove beyond a reasonable doubt that the defendant was aware of the common purpose and was a willing participant.

INSTRUCTION NO. 25

Count Three charges that from late December 2000 and continuing until on or about April 15, 2002, WILLIE HARRIS, WILLIAM SMITH and ROOSEVELT POWELL conspired to defraud the United States and the Internal Revenue Service.

Count Three charges a violation of the same statute as Count 2 – Title 18, United States Code, Section 371 – but in a different way. In addition to conspiracy to commit an offense against the United States as charged in Count 2, one can also commit conspiracy by conspiring or agreeing to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment, and collection of income taxes, as alleged in Count Three.

INSTRUCTION NO. 26

To sustain the charge of conspiracy as charged in Count Three, the government must prove:

First, that the conspiracy as charged in Count Three existed;

Second, that the defendant knowingly became a member of the conspiracy with an intention to further the conspiracy; and

Third, that an overt act was committed by at least one conspirator in furtherance of the conspiracy.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

A conspiracy may be established even if its purpose was not accomplished.

It is not necessary that all the overt acts charged in the indictment be proved, and the overt act proved may itself be a lawful act.

To be a member of the conspiracy, the defendant need not join at the beginning or know all the other members or the means by which its purpose was to be accomplished. The government must prove beyond a reasonable doubt that the defendant was aware of the common purpose and was a willing participant.

INSTRUCTION NO. 27

A conspiracy to defraud the United States includes conspiracies to interfere with, or obstruct, any lawful government function by fraud, deceit or any dishonest means.

The Internal Revenue Service, commonly known as the IRS, is an agency of the United States Government. The IRS is responsible for the collection of tax revenue. As part of those efforts, the IRS requires that taxpayers truthfully and honestly report their full taxable income and that representations made to it about the nature of transactions are truthful. Thus, the phrase “conspiracy to defraud the United States” in this Indictment means that the defendants allegedly conspired to impede, impair, obstruct or defeat the lawful functions of the IRS to ascertain taxes and to lawfully collect tax revenue due and owing.

INSTRUCTION NO. 28

Count Four charges WILLIAM A. SMITH with filing a false or fraudulent tax return for the year 2001.

Count Five charges ROOSEVELT POWELL with filing a false or fraudulent tax return for the year 2001.

Count Six charges WILLIE HARRIS with filing a false or fraudulent tax return for the year 2001.

Counts Four, Five and Six all allege a violation of Title 26, United States Code, Section 7206(1), which provides that:

Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter [shall be guilty of a crime].

INSTRUCTION NO. 29

To sustain the charge that a defendant willfully made and caused to be made a false individual income tax return for Counts Four, Five and Six, the government must prove the following propositions:

First, the defendant made or caused to be made the income tax return;

Second, the defendant signed the income tax return, which contained a written declaration that it was made under penalties of perjury;

Third, the defendant filed the income tax return or caused the income tax return to be filed with the Internal Revenue Service;

Fourth, the income tax return was false as to a material matter, as charged in the count; and

Fifth, when the defendant made and signed the tax return, the defendant did so willfully and did not believe that the tax return was true, correct and complete as to every material matter.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt as to the particular count, then you should find the defendant guilty of the particular count.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt as to the particular count, then you should find the defendant not guilty of that particular count.

INSTRUCTION NO. 30

For Counts Four, Five and Six, the word “willfully” means the voluntary and intentional violation of a known legal duty or the purposeful omission to do what the law requires. The defendant acted willfully if he knew it was his legal duty to file truthful tax returns, and intentionally filed a false return.

INSTRUCTION NO. 31

Any tax return signed or subscribed by an electronic signature shall be treated as having been signed under penalty of perjury.

INSTRUCTION NO. 32

A line on a tax return is a material matter if the information required to be reported on that line is capable of influencing the correct computation of the amount of tax liability of the individual or the verification of the accuracy of the return.

For Count Four, if you find that defendant WILLIAM SMITH willfully understated the amount of total income (Line 22) on his individual tax return, and if you find that the amount of total income is essential to a correct computation of the amount of taxable income or tax or to the verification of that return, then you may find that the false and fraudulent statements were false as to a material matter.

For Count Five, if you find that defendant ROOSEVELT POWELL willfully understated the amount of total income (Line 22) on his individual tax return, and if you find that the amount of total income is essential to a correct computation of the amount of taxable income or tax or to the verification of that return, then you may find that the false and fraudulent statements were false as to a material matter.

For Count Six, if you find that defendant WILLIE HARRIS willfully understated the amount of a capital gain (Line 13) or total income (Line 22) on his individual tax return, and if you find that the amount of a capital gain or total income is essential to a correct computation of the amount of taxable income or tax or to the verification of that return, then you may find that the false and fraudulent statements were false as to a material matter.

INSTRUCTION NO. 33

You are instructed that in proving that a defendant violated Counts Three, Four, Five and Six, the government does not have to prove that there was a tax due and owing for the years in issue. Whether the government has or has not suffered a pecuniary or monetary loss as a result of the alleged return is not an element of the offense.

INSTRUCTION NO. 34

It is not necessary to prove that the accused personally did every act constituting the offense charged. As a general rule, whatever any person is legally capable of doing himself, he can do through another as his agent. So, if the acts or conduct of an employee or other agent are willfully ordered or directed, or willfully authorized or consented to by the accused, then the law holds the accused responsible for such acts or conduct the same as if personally done by the accused.

INSTRUCTION NO. 35

If you find beyond a reasonable doubt from the evidence in this case that a fraudulent return was filed and that this was done willfully as charged in Counts Four, Five or Six of the Indictment, then you may find that the offense was complete when the fraudulent return was filed.

INSTRUCTION NO. 36

The indictment charges that the offenses in Counts One through Six were committed ‘on or about’ various dates. The government must prove that an offense happened reasonably close to that date but is not required to prove that the alleged offense happened on that exact date.

INSTRUCTION NO. 37

Any person who knowingly aids, counsels, commands, induces or procures the commission of an offense may be found guilty of that offense. That person must knowingly associate with the criminal activity, participate in the activity, and try to make it succeed.

If a defendant knowingly caused the acts of another, the defendant is responsible for those acts as though he personally committed them.

INSTRUCTION NO. 38

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in, date, and each of you will sign the appropriate form.

PROPOSED INSTRUCTION NO. 39

Each count of the Indictment charges each defendant named in that count with having committed a separate offense.

You must give separate consideration both to each count and to each defendant. You must consider each count and the evidence relating to it separate and apart from every other count.

You should return a separate verdict as to each defendant and as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to that defendant under any other count.

INSTRUCTION NO. 40

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

INSTRUCTION NO. 41

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.