

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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|                           |   |                       |
|---------------------------|---|-----------------------|
| UNITED STATES OF AMERICA, | ) |                       |
|                           | ) |                       |
| Plaintiff,                | ) |                       |
|                           | ) |                       |
| VS.                       | ) | CR. NO. 03-20111 M1/A |
|                           | ) |                       |
| VERNICE B. KUGLIN,        | ) |                       |
|                           | ) |                       |
|                           | ) |                       |
| Defendant.                | ) |                       |

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Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished you will go to the jury room and begin your discussions - what we call your deliberations.

It will be your duty to decide whether the government has proved beyond a reasonable doubt the specific facts necessary to find the defendant guilty of the crimes charged in the indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial; and you must not be influenced in any way by either sympathy or prejudice for or against the defendant or the government.

You must also follow the law as I explain it to you whether you agree with that law or not; and you must follow all of my instructions as a whole. You may not single out, or disregard, any of the Court's instructions on the law.

The indictment or formal charge against the defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require the defendant to prove her innocence or produce any evidence at all. The government has the burden of proving the defendant guilty beyond a reasonable doubt as to each charge in the indictment, and if it fails to do so you must find the defendant not guilty as to the charge you are considering.

While the government's burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning a defendant's guilt.

A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

As stated earlier you must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses, the exhibits admitted in the record and any facts of which the court has taken judicial notice. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that the defendant is either guilty or not guilty. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Also you should not assume from anything I may have said or done that I have any opinion concerning any of the issues in this case. Except for my instructions to you, you should disregard anything I may have said in arriving at your own decision concerning the facts.

The defendant has been charged with six crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any of the other charges.

You are instructed that the Court has taken judicial notice of the fact that Memphis, Shelby County, Tennessee, is located in the Western District of Tennessee.

Since you are the fact-finders in this case, you may, but are not required to, accept this fact as conclusively established.

Number of Witnesses  
Credibility

Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling. You may decide that the testimony of a smaller number of witnesses concerning any fact in dispute is more believable than the testimony of a larger number of witnesses to the contrary.

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the person impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things the witness testified about? Did the witness appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony the witness gave before you during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as the witness remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and that may depend on whether it has to do with an important fact or with only an unimportant detail.



You have heard the defendant testify. Earlier, I talked to you about the "credibility" or the "believability" of the witnesses. And I suggested some things for you to consider in evaluating each witness's testimony.

You should consider those same things in evaluating the defendant's testimony.

Law Enforcement  
Witnesses

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the city or county government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witnesses and to give to that testimony whatever weight, if any, you find it deserves.

Indictment  
Not Guilty Plea

I told you at the outset that this case was initiated through an indictment. An indictment is but a formal method of accusing the defendant of a crime. It includes the government's theory of the case, and we will be going over in a few minutes the substance of the indictment. The indictment is not evidence of any kind against an accused.

The defendant has pleaded not guilty to the charges contained in the indictment. This plea puts in issue each of the essential elements of the offenses as described in these instructions and imposes upon the government the burden of establishing each of these elements by proof beyond a reasonable doubt.

I will read the indictment to you once again so that you are well aware of the charges made in the indictment. The indictment charges the defendant with evasion of income tax.

The indictment reads:

[Read Indictment]

The Indictment and the Statute

The indictment alleges that the defendant violated section 7201 of Title 26 of the United States Code which provides, in pertinent part:

Any person who willfully attempts in any manner to evade or defeat any tax imposed by the [Internal Revenue Code shall be guilty of a crime].

The system of tax collection in the United States relies upon the honesty of taxpayers. The government needs taxpayers to report timely, completely, and honestly all taxes they owe so that it can collect the taxes due. Congress, therefore, has made it a criminal offense for a taxpayer to evade taxes, to file a false return, or to file no return under certain circumstances.

Elements of the Offense

In order for the crime of income tax evasion to be proved, the government must establish beyond a reasonable doubt each of the following elements:

First, that there was a tax deficiency,

Second, that the defendant committed an affirmative act constituting tax evasion or attempted tax evasion, and

Third, that the defendant acted willfully.

The first element of the offense which the government must prove beyond a reasonable doubt is that there was a tax deficiency. That is, that the defendant owed federal income tax for the year specified in the indictment as to the count you are considering. The government does not have to prove the exact amount of taxes the defendant owes, nor must the government prove that the defendant evaded all of the tax she owed.



The second element that the government must prove beyond a reasonable doubt as to each count is that the defendant committed an affirmative act constituting tax evasion.

The Internal Revenue Code makes it a crime to attempt, in any manner, to evade or defeat any income tax imposed by law. There are many different ways in which a tax may be evaded, or an attempt may be made to evade it. For example, in this case the government asserts that Ms. Kuglin attempted to evade or defeat the income tax due by filing false Form W-4's for application as to each tax year alleged in the counts in the indictment.

There has been evidence in this case that the defendant failed to file a tax return for the years 1996; 1997; 1998; 1999; 2000; and 2001. I instruct you that the failure to file a tax return is not sufficient by itself to satisfy this element. Instead, the government must prove beyond a reasonable doubt an act of evasion. Specifically, the government must prove that the defendant committed an affirmative act constituting evasion. This must be a positive act of commission designed to mislead or conceal. A willful act of omission is insufficient to satisfy this requirement, therefore, neither the failure to file a return

nor the failure to pay income tax can be the basis for conviction.

The Supreme Court of the United States has defined this element as requiring proof of "conduct the likely effect of which would be to mislead or conceal."

In other words, any act which is likely to mislead the government or conceal funds satisfies this element. Thus, filing a false form (for example, a W-4 withholding form) or a false tax return is sufficient, as are false statements made to the Internal Revenue Service after the return was due or filed. Large cash transactions may also be evidence of an affirmative act of evasion.

It is not necessary to prove a separate act constituting evasion for each tax year which is the subject of the prosecution; thus, filing a false W-4 withholding form satisfies this element as to each year for which it was in effect.

Third Element - Willfulness

The third element of the offense which the government must prove beyond a reasonable doubt is that the defendant acted knowingly and willfully.

Whether or not the defendant acted knowingly and willfully is a question of fact to be determined by you based upon all of the evidence in this case. An act is done knowingly if it is done purposefully and deliberately and not because of mistake, accident, negligence or other innocent reason.

The government must also prove beyond a reasonable doubt that the defendant acted willfully. A willful act is defined as a voluntary and intentional violation of a known legal duty. Thus, the government must prove beyond a reasonable doubt that the defendant possessed the specific intent to defeat or evade the payment of income tax the defendant knew it was her duty to pay.

The word "willfully" in the criminal tax statutes requires a voluntary, intentional violation of a known legal duty. The requirement of willfulness, therefore, means an act undertaken with "bad faith or evil intent," or "evil motive and want of justification in view of all the financial circumstances of the taxpayer."

In our complex tax system, uncertainty often arises even among taxpayers who earnestly wish to follow the law. It is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care. Degrees of negligence give rise in the tax system to civil penalties. The requirement that an offense be committed "willfully" is not met, therefore, if a taxpayer has relied in good faith on a prior decision of the Supreme Court, the Internal Revenue Code, or the regulations and instructions published by the Internal Revenue Service. Thus, the word "willfully," under 26 U.S.C. § 7201, includes the concept of "bad faith or evil intent" that separates the purposeful tax violator from the well-meaning, but sometimes confused, mass of innocent taxpayers.

## Good Faith Defense

"Willfulness" is negated by the defense of a good faith mistake of the laws requirements. To make such a determination, one must inquire into the defendant's mind, her mental attitude, and her approach to the situation which she believed the law required. If you find that the defendant, subjectively in her own mind, believed that she was not required by the law to file the returns in question, it will be your duty to find her not guilty.

A defendant does not act willfully if she believes in good faith that her actions comply with the law. Therefore, if the defendant actually believed that what she was doing was in accord with the tax statutes, she cannot be said to have had the criminal intent to willfully evade taxes. Thus, if you find that the defendant honestly believed that she owed no taxes, even if that belief was unreasonable or irrational, then you should find her not guilty. However, you may consider whether the defendant's belief was actually reasonable as a factor in deciding whether she held that belief in good faith. It should also be pointed out that neither the defendant's disagreement with the law nor her own belief that the law is unconstitutional, no matter how earnestly that belief is held, constitutes a

defense of good faith. It is the duty of all citizens to obey the law regardless of whether they agree with it.

If the defendant acted in good faith, that is to say she actually believed the actions she took were allowable by law, then she is not guilty of the offenses of tax evasion. It does not matter whether the defendant was right or wrong in her beliefs, nor does it matter if her beliefs make sense, or sounds reasonable to you the jury or to me as the judge. The only thing that matters is whether or not the defendant actually believed she was correct in her actions. Also, it is not the defendant's burden to prove that she did believe her actions were correct, but rather it's the Government's burden to prove that she did not.

It is for you, the jury, to decide whether the Government has proven that the defendant willfully committed tax evasion by proving beyond a reasonable doubt that she did not actually believe her actions were correct, and by proving all the other elements that I have explained to you in these instructions, or whether the defendant believed her actions were proper. If you find that the Government has failed to meet its burden, then you must find the defendant not guilty of these offenses. If there is a reasonable doubt in your mind as to this issue, or even if you conclude that the defendant could have only believed her actions were proper by abysmal ignorance and the rankest kind of

stupidity, yet you find that she believed she was correct (i.e., in conformance with the law), you must find the defendant not guilty.

The burden of establishing lack of good faith and criminal intent rests upon the prosecution. A defendant is under no burden to prove her good faith; rather, the prosecution must prove bad faith or knowledge of falsity beyond a reasonable doubt.



In this case, the defendant is not presumed to know the law.

I instruct you, however, that the law is that wages are income and must be included in gross income when determining income tax liability.

As a part of the defendant's good faith defense to the charges in this case, the defendant asserts that she did not file income tax returns or pay income taxes because she had a good faith belief, based upon the use of the word "voluntary" in various Internal Revenue Service publications, that the filing of tax returns and the payment of income taxes was "voluntary." Regarding this matter, I am instructing you that the word voluntary is not the equivalent of optional. To the extent that income taxes are said to be voluntary, they are only voluntary in that one files the returns and pays the taxes without Internal Revenue Service first telling each individual the amount due and then forcing payment of that amount. The payment of taxes is not optional.

As part of the defendant's good faith defense to the charges in this case, she asserts that she did not file income tax returns or pay income taxes because she had a good faith belief, based upon her reading of the Paper Work Reduction Act, that she was not required to comply with the tax laws because the tax forms and instructions did not comply with the provisions of the Paper Work Reduction Act. Regarding this matter, I am instructing you that as a matter of law, the Paper Work Reduction Act does not apply to the statutory requirement that an individual file a tax return, but applies only to the forms themselves, which contain the appropriate numbers.

## Summary

If you find that the government has proved beyond a reasonable doubt each of the elements of the offense as set out under these instructions, then, as to the count you are considering, you must return a verdict of guilty as to that count. If you find that the government has not proved beyond a reasonable doubt each of the elements of the offense as set out in these instructions, then, as to the count you are considering, you must return a verdict of not guilty as to that count.

Inferring Required  
Mental State

Finally, I want to explain something about proving a defendant's state of mind.

Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But, a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that the defendant knowingly did or did not do, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty of Counts 1, 2, 3, 4, 5, and/or 6 of the indictment. The defendant is on trial only for the specific offenses alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted the matter of punishment is for the law to determine.

You are here to determine the guilt or innocence of the accused defendant from the evidence in this case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. You must determine whether or not the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused without regard to any belief you may have about guilt or innocence of any other person or persons.

You have no right to find the defendant guilty only for the purpose of deterring others from committing crime.



There is a distinction between the civil liability of a defendant and a defendant's criminal liability. Remember, this is a criminal case.

The defendant is charged under the law with the commission of a crime, and the issue of whether the defendant has or has not settled any civil liability for the payment of taxes is not to be considered by you in reaching a verdict. Your verdict in this case has no effect on the government's ability to collect any back taxes and penalties in a civil case.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way you are judges - judges of the facts.

When you go to the jury room you should first select one of your members to act as your presiding juror. The presiding juror will preside over your deliberations and will speak for you here in court.

A verdict form has been prepared for your convenience. The verdict form will be placed in a folder and handed to you by the Court Security Officer. At any time that you are not deliberating (i.e., when at lunch or during a break in deliberations), the folder and verdict form should be delivered to the Court Security Officer who will deliver it to the courtroom clerk for safekeeping.

[EXPLAIN VERDICT]

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your presiding juror fill in the verdict form, date and sign it, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the Court Security Officer who will bring it to my attention. I will then respond as promptly as possible after conferring with counsel and the parties, either in writing or by having you

return to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at any time.

If you feel a need to see the exhibits which are not being sent to you for further examination, advise the Court Security Officer and I will take up your request at that time.

[ANY JURY ALTERNATES NOT ALREADY EXCUSED,  
SHOULD BE EXCUSED AT THIS TIME].

You may now retire to begin your deliberations.

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WESTERN DIVISION

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|                           | ) |                  |
|                           | ) |                  |
| Defendant.                | ) |                  |

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V E R D I C T

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We, the jury, on the charges in the indictment for our  
verdict say:

1. We find the defendant, VERNICE B. KUGLIN, as to Count 1

(Guilty) or (Not Guilty).

2. We find the defendant, VERNICE B. KUGLIN, as to Count 2

(Guilty) or (Not Guilty).

3. We find the defendant, VERNICE B. KUGLIN, as to Count 3

(Guilty) or (Not Guilty).

4. We find the defendant, VERNICE B. KUGLIN, as to Count 4

\_\_\_\_\_  
(Guilty) or (Not Guilty)

5. We find the defendant, VERNICE B. KUGLIN, as to Count 5

\_\_\_\_\_  
(Guilty) or (Not Guilty)

6. We find the defendant, VERNICE B. KUGLIN, as to Count 6

\_\_\_\_\_  
(Guilty) or (Not Guilty)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
FOREPERSON

INDEX

USA v. Kuglin  
Case No. 03-20111

CRIMINAL CHARGE BOOK  
[Jury Instructions]

2. General Instruction
3. Reasonable Doubt
4. Evidence (Direct and Circumstantial)
5. Judicial Notice
6. Evidence/Number of Witnesses/Credibility
7. Defendant's Testimony
8. Testimony of Law Enforcement Officials
9. Indictment Not Evidence/Not Guilty Plea
10. Reading of Indictment
11. 26 U.S.C. § 7201
  - (a) Purpose of the Statute (59-4)
  - (b) Elements of the Offense (59-3)
    1. Tax Due (59-4)
    2. Affirmative Act (59-7)
    3. Willfulness (59-8)
    4. Additional Willfulness Instruction
11. Good Faith Defense
  1. Good Faith (D-18)
  2. Defendant Not Presumed to Know the Law (D-19)
  3. Voluntary as Defined by IRS (G-8)
  4. Paper Work Reduction Act (G-9)
12. Defendant's State of Mind
13. Summary
14. Consider Only Specific Offense Charged
15. Disregard Belief as to Guilt or Innocence of Other Persons
16. No Right to Find Defendant Guilty to Deter Others (D-29)
17. Distinction Between Civil and Criminal Liability (D-30)
18. IRS Commissioner's Right to Assess Tax (D-31)
19. Verdict Must Be Unanimous/Duty to Discuss With Each Other
20. Verdict Form