

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

No. 08-CR-2006-LRR

vs.

ANGELIQUE TINDER, n/k/a/
ANGELIQUE HOWEN,

Defendant.

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will 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 and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses and the documents and other thing received as exhibits.

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 shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.
3. Objections are not evidence. The parties 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.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

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

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 7

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness. 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.

INSTRUCTION NO. 8

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

INSTRUCTION NO. 9

You have heard evidence that the defendant committed acts similar to those charged. You may not use this “other acts” evidence to decide whether the defendant carried out the acts involved in the crimes charged in the Indictment. In order to consider “other acts” evidence at all, you must first unanimously find, beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crimes charged in the Indictment. If you make this finding, then you may consider the “other acts” evidence to decide the defendant’s intent or absence of mistake.

“Other acts” evidence must be proven by a preponderance of the evidence; that is, you must find that the evidence is more likely true than not true. This is a lower standard of proof than proof beyond a reasonable doubt. If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proven by a preponderance of the evidence, then you must disregard such evidence.

Remember, even if you find that the defendant may have committed other acts at times other than those charged in the Indictment, this is not evidence that she committed such an act in this case. You may not convict a person simply because you believe she may have committed other acts. The defendant is on trial only for the crimes charged, and you may consider the evidence of “other acts” only on the issue of her intent or absence of mistake.

INSTRUCTION NO. 10

You have heard testimony that the defendant made statements to law enforcement officers in this case. It is for you to decide:

- (1) whether the defendant made the statements and
- (2) if so, how much weight you should give to them.

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NO. 11

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

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

INSTRUCTION NO. 12

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was received by you.

INSTRUCTION NO. 13

The Indictment in this case charges the defendant with 32 counts of aiding, assisting, procuring, counseling, and advising the preparation and presentation of false and fraudulent amended income tax returns. Each of the 32 counts is summarized below:

Count	Date	Taxpayer Name(s)	Calendar Tax Year	Falsely Claimed Item(s)
4.	5/16/2003	Mumita and Tajana Sehic	2000	Education Credit
5.	5/16/2003	Mumin and Tajana Sehic	2001	Education Credit/ Medical Expenses/ Unreimbursed Employee Expenses
6.	5/16/2003	Mumin and Tajana Sehic	2002	Medical Expenses/ Charitable Contribution/ Unreimbursed Employee Expense Deductions/ Education Credit
7.	5/17/2003	Branko and Jadranka Todorovic	2000	Medical Expenses/ Charitable contributions/ Unreimbursed employee expense deductions
8.	5/17/2003	Branko and Jadranka Todorovic	2001	Education Credit

INSTRUCTION NO. 13 (Cont'd)

9.	5/17/2003	Branko and Jadranka Todorovic	2002	Hope Education Credit
10.	5/17/2003	Vanja Todorovic	2000	Education Credit
11.	5/17/2003	Vanja Todorovic	2002	Medical Expense/ Charitable Contributions/ Unreimbursed employee expenses/ Lifetime Learning Credit
12.	5/16/2003	Emсад and Jasminka Mujanic	2000	Education Credit
13.	5/16/2003	Emсад and Jasminka Mujanic	2001	Education Credit
14.	5/16/2003	Emсад and Jasminka Mujanic	2002	Education Credit
15.	5/16/2003	Fadil and Verica Karic	2000	Education Credit
16.	5/16/2003	Fadil and Verica Karic	2001	Education Credit
17.	5/16/2003	Fadil and Verica Karic	2002	Education Credit
18.	5/16/2003	Jasminka Karic	2001	Education Credit
19.	5/16/2003	Ahmir Obarcanin	2000	Medical/ Charitable/ Unreimbursed Employee Expense Deductions

INSTRUCTION NO. 13 (Cont'd)

20.	5/16/2003	Almir Obarcanin	2001	Medical Expense/ Unreimbursed Employee Expense Deductions
21.	5/16/2003	Semir and Dzenka Husnic	2000	Education Credit/ Unreimbursed Employee Expense Deductions
22.	5/16/2003	Semir and Dzenka Husnic	2001	Education Credit/ Charitable Contributions/ Unreimbursed Employee Expense Deductions
23.	5/16/2003	Semir and Dzenka Husnic	2002	Unreimbursed Employee Expense Deductions
24.	5/16/2003	Vlado and Zenaida Visnjic	2000	Unreimbursed Employee Expense Deductions
25.	5/16/2003	Vlado and Zenaida Visnjic	2001	Unreimbursed Employee Expense Deductions
26.	5/16/2003	Vlado and Zenaida Visnjic	2002	Education Credit
27.	5/16/2003	Sasa Visnjic	2000	Unreimbursed Employee Expense/ Charitable Contribution Deductions

INSTRUCTION NO. 13 (Cont'd)

28.	5/16/2003	Sasa Vismjic	2001	Unreimbursed Employee Expense/ Charitable contribution Deductions
29.	5/16/2003	Sasa Vismjic	2002	Unreimbursed Employee Expense/ Charitable contribution deductions
30.	5/16/2003	Borislav and Serafina Pajic	2000	Education Credit
31.	5/16/2003	Borislav and Serafina Pajic	2001	Education Credit
32.	5/16/2003	Borislav and Serafina Pajic	2002	Education Credit
33.	5/15/2003	Denis and Zenaida Smajlovic	2000	Medical/ Charitable Contribution/ Unreimbursed Employee Expense Deductions
34.	5/15/2003	Denis and Zenaida Smajlovic	2001	Medical/ Charitable Contribution/ Unreimbursed Employee Expense Deductions
35.	5/15/2003	Denis and Zenaida Smajlovic	2002	Hope Education Credit

INSTRUCTION NO. 13 (Cont'd)

The defendant has pled not guilty to each crime with which she has been charged.

As I told you at the beginning of the trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against her. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged. Keep in mind that you must consider, separately, each crime charged against the defendant, and must return a separate verdict for each of the crimes charged.

There is no burden upon a defendant to prove that she is innocent. Accordingly, the fact that defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

INSTRUCTION NO. 14

The crime of aiding and assisting the preparation of false or fraudulent personal income tax returns, as charged in Counts 4 through 35 of the Indictment, has five essential elements, which are:

One, the defendant aided, assisted in, procured, counseled or advised the preparation or presentation of an Amended U.S. Individual Income Tax Return, Form 1040X;

Two, the Amended U.S. Individual Income Tax Return, Form 1040X under consideration by you falsely stated that the taxpayer or taxpayers were entitled to under the provisions of Internal Revenue Service laws, one or more deductions or credits for items or amounts for which such taxpayer or taxpayers were not entitled to claim deductions or credits;

Three, the defendant knew the statement in the Amended U.S. Individual Income Tax Return, Form 1040X under consideration by you, was false;

Four, the defendant acted willfully, that is, with the voluntary intent to violate a known legal duty; and

Five, the false statement was material.

If each of these elements has been proved beyond a reasonable doubt as to the count under consideration by you, then you must find the defendant guilty as to that count. Otherwise, you must find the defendant not guilty of the crime for the count under consideration by you.

INSTRUCTION NO. 14A

To return a verdict of guilty under each count that alleges multiple falsely claimed items, you need not unanimously agree that every alleged claim is false. You must, however, unanimously agree that at least one of the claimed items alleged in the Indictment is false. You must also unanimously agree on which of the claimed items is false.

If you cannot agree that the same claimed item is false, you may not return a verdict of guilty on that count.

INSTRUCTION NO. 15

A statement is material if it concerned a matter necessary to the correct computation of taxes owed and statement was capable of influencing the decision of the Internal Revenue Service. It is not necessary that the government prove the falsity or fraud was made with the knowledge of the person required to present the Amended U.S. Individual Income Tax Return, Form 1040X. The Amended U.S. Individual Income Tax Return, Form 1040X must be false as to the matter stated in the Indictment. The government, however, is not required to prove that a taxpayer was paid any additional tax refund for the year in question. A monetary loss to the government is not an element of this crime.

INSTRUCTION NO. 16

You will note the Indictment charges that the offenses were committed “on or about” certain dates. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NO. 17

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NO. 18

An act is done “knowingly” if the defendant realized what she was doing and did not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider the evidence of the defendant’s acts and words along with all other evidence in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 19

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

INSTRUCTION NO. 20

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 21

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 22

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall 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 an 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 Court Security Officer, 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 votes stand numerically.

(CONTINUED)

INSTRUCTION NO. 22 (Cont'd)

Finally, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, 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.

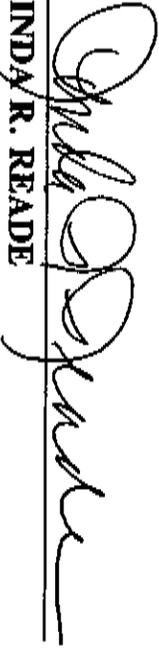
INSTRUCTION NO. 23

Attached to these instructions you will find 32 Verdict Forms. These Verdict Forms are simply the written notices of the decisions that you reach in this case. The answers to these Verdict Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on answers to the Verdict Forms, your foreperson will fill out the Verdict Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdicts as accord with the evidence and these instructions.

August 28, 2008
DATE


LINDA R. READE

CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA